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The American Political Science Review

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PLANNING AGENCIES IN AMERICA

CHARLES E. MERRIAM

University of Chicago

An important and clearly marked recent trend in American government is that in the direction of systematic planning—local, state, and national. City planning has developed for the last twenty years, and there are now some 700 city planning agencies. The activities of these boards have been halted somewhat during the depression, although some 9,000 workers under the C.W.A. aided in the development of city plans in 1934. On the whole, the cities have fallen behind in the movement they started.

The most significant single event in the urban field is the establishment of a new type of planning agency in Cincinnati, known as the department of economic security, an office through which the employment and reëmployment problems of that community are made the subject of governmental study and action, in cooperation with industry. The director is a man of wide experience and broad social vision in the person of Colonel Waite, one time city manager of Dayton and recently deputy administrator of public works

There is reason to believe, as a result of recent discussion in the Mayors' Conference and in the American Municipal Association, that in the near future city planning will develop more widely than before. This advance tends to take the form of (1) metropolitan regional planning and (2) broader social planning in which housing, recreation, and social welfare occupy a more conspicuous place than heretofore

In the rural field, the development of county planning looms large. Particularly in Wisconsin, the planning function of the county with reference especially to land use has been advanced in a very notable manner. There are now nearly one hundred county

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planning agencies in existence and a widespread interest in the further development of rural planning.

Until a few years ago, state planning was almost unknown, although there were developments in New York and in Wisconsin, and there were scattered conservation agencies in one field or another in many of the commonwealths. There are now forty-three state planning boards in operation, and it is not unlikely that there will be forty-eight within a short time. These boards were set up with the aid of a state consultant supplied by the National Resources Board. The scope and method of the work of these boards vary widely from state to state, but include as a minimum land-use, conservation, transportation, and public works. In other instances, education, taxation, governmental reorganization, industrial and social welfare problems, have been made the subject of consideration. Almost all of these states have prepared preliminary reports, ranging from inventories of state assets to constructive proposals regarding their use. These programs are concerned with long-time capital expenditure budgets, with grade crossings, with rural electrification, with soil erosion, with flood control and power development, with land use, with recreation, with schools, unemployment, industrial relations, depending on the special problems of the state or the line of interest of the board. Taken together, they constitute a unique development of state planning policy and mark a new phase in the organization of state activities.

Alongside this development must be set the growth of legislative councils in several states, as a result of the work of the American Legislators' Association. These bodies attempt to bring together the legislative and administrative agencies of the states for the purpose of preparing a program of action for the ensuing legislative session. They coöperate with state planning boards, with which indeed in some cases, as in Kansas and Virginia, they have been consolidated.

Further, the state planning boards have been grouped into twelve planning districts, each with a district chairman, under the National Resources Board, in order that closer coöperation may be brought about between several states having common problems. In addition to this, two interstate planning commissions have been set up—the Pacific Northwest Regional Planning Commission and the New England Council. The first of these deals

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with planning for the Columbia River Basin and the second with the Connecticut River Valley, for the time, and with interstate parkways and freeways.

In the national field, there have been important developments of the same general type. In 1931, Governor Roosevelt declared that "in the long run state and national planning is essential to the future prosperity, happiness, and existence of the American people." President Hoover's Research Committee on Recent Social Trends suggested in 1933 the establishment of a National Advisory Council "including scientific, educational, governmental, economic (including industrial, agricultural, labor) points of contact, or other appropriate elements able to contribute to the consideration of the basic problems of the nation." "In any case," said the Committee, "and whatever the approach, it is clear that the type of planning now most urgently required is neither economic planning alone nor governmental planning alone. The new synthesis must include the scientific, the educational, as well as the economic and also the governmental. All these factors are inextricably intertwined in modern life, and it is impossible to make rapid progress without drawing them all together."

The Committee further suggested that the Social Science Research Council might care to develop inquiries into lines of national policy, and this was done by the selection of three commissions of inquiry, dealing (1) with international relations, (2) with public service personnel, and (3) with population redistribution. Two of these commissions—those on international relations and public service personnel—have already reported.

Under authority of the N.I.R.A., Secretary Ickes appointed in July, 1933, a National Planning Board, consisting of Frederick A. Delano, Wesley C. Mitchell, and Charles E. Merriam. This board undertook two principal tasks: (1) the long-time planning of public works; and (2) the preparation of a plan for national planning.

The report of July 1, 1934, covered a plan for planning. It was accompanied by a discussion of the rôle of science in national planning, prepared by the National Academy of Science committee on governmental relations, and another on the rôle of social science in planning, prepared by the Social Science Research Council. It contained also an analysis of various planning agencies in the United States government and in a number of modern nations,

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including Japan, Italy, Russia, and Germany, and a study of the economic councils of other states.[1]

As a result of this report, President Roosevelt created in July, 1934, the National Resources Board for the consideration both of natural and of human resources. This board consisted of the Secretary of the Interior, of Agriculture, of Labor, of War, of Commerce, the Relief Administrator, and Delano, Mitchell, and Merriam. The latter three also constituted an advisory committee in charge of the inquiries of the board.

At the direction of the President, a report on the land and water resources of the United States was prepared and presented on December 1. This included also an analysis of long-time planning of public works and a discussion of national planning methods.[2] The report was based on studies made by a technical committee on land use of which Dr. Gray was chairman; another on water uses, of which Morris L. Cooke was chairman; and another on mineral uses, of which Professor C. K. Leith was chairman. There was also included the special material collected for the P.W.A. board by Professors Maurice Clark, Gayer, Black, Powell, and others on long-time planning of public works.

The natural resources of America, said the Board in its opening statement, are the heritage of the whole nation and should be conserved and utilized for the benefit of all of our people. Our national democracy is built upon the principle that the gains of our civilization are essentially mass gains and should be administered for the benefit of the many rather than the few; our priceless resources of soil, water, and minerals are for the service of the American people, for the promotion of the welfare and well-being of all citizens.

This report of the President's National Resources Board brings together, for the first time in our history, exhaustive studies by highly competent inquirers into land use, water use, minerals, and related public works in their relation to each other and to national planning. The report lays the basis of a comprehensive long-range national policy for the conservation and development of our fabulous natural resources. If the recommendations are put into effect, it is believed that they will end the untold waste of our national domain now, and will measurably enrich and enlarge these national treasures as time goes on.

[1] *Report of National Planning Board* (1934).
[2] *Report of National Resources Board* (1934).

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It was the special purpose of the National Resources Board to bring together these and other social interests, sets of data, and principles of action, and to consider them from the over-all position of national policy. In so doing, however, we should guard against too narrow a view of the possibilities of natural resources development, attractive as they are. The economic crisis in the United States was not caused by erosion, serious as its inroads are on our soil assets; nor is unemployment due chiefly to lack of adequate flood control, calamitous as the consequences of floods are in many instances. It is too much to suppose that the proper development of our drainage basins will of itself solve the problems of the perplexed body politic. The problems centering around land and water cannot be solved in these terms alone, but require for their practical and successful treatment a full consideration of the broader but closely related aspects of agriculture, industry, labor, transportation and communication, health, education, public finance, governmental organization.

Finally, human resources and human values are more significant than the land, water, and minerals on which men are dependent. The application of engineering and technological knowledge to the reorganization of the natural resources of the nation is not an end in itself, but is to be conceived as a means of progressively decreasing the burdens imposed upon labor, raising the standard of living, and enhancing the well-being of the masses of the people.

The program indicated is too long to be discussed here in detail, but in broad outline the policy indicated was as follows: (1) Provide for the systematic development of our water resources for purposes of sanitation, power, industrial uses, transportation, recreation, domestic consumption, and other collateral uses on a far higher level than ever before. (2) Remove the recurring menace of great floods and vast losses to persons and property. (3) Reduce the heavy losses of soil caused by uncontrolled erosion. (4) Eliminate the use of land incapable of affording a minimum standard of living, develop agricultural production on the most suitable soils only, and thus aid in raising the standards of living in many agricultural regions. (5) End the wasteful use of our mineral resources and substitute a national policy of mineral conservation. (6) Make available large areas of land for purposes of popular recreation. (7) Assemble basic data necessary for national planning. (8) Avoid the extravagance caused by failure to coördinate public works—federal, state, and local; bring about better programming

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of socially useful public works; prepare public works projects suitable, if desired, for use in emergency situations. (9) Provide for continuous long-range planning of land, water, and mineral resources in relation to each other and to the larger background of the social and economic life in which they are set.

This program contained many detailed recommendations, but, speaking broadly, the following were perhaps the most important: (1) A land-purchase program providing for the retirement of some five million acres of sub-marginal land yearly for some fifteen years, with administration through a permanent land-planning section, coöperating with state and local boards and authorities (with many collateral recommendations). (2) A permanent water-planning section to proceed with detailed engineering, social, financial, and legal studies of seventeen major drainage basins, and the preparation of constructive programs for their development (with many collateral recommendations). (3) In mineral industries, permanent regulation of competition, adequate to control production, capacity, surplus stocks, and protection of the workers. Consideration of retirement of marginal mines was also indicated. Scientific research to foster mining technology was recommended. For all these purposes, a permanent mineral policy committee is suggested. A further report on this subject is in preparation, and also a report on hydro-electric power. (4) A permanent public works administration, preparing a six-year works program, operating through lump sum appropriations by Congress, and assuming the leadership in coöperation between national and local public works authorities. (5) Continued encouragement of and coöperation with state and regional planning boards. (6) Collection of basic data for planning, including a financial balance sheet for the federal government, a mid-decennial census of population and employment, completion of standard maps of the United States, basic scientific studies of land and water resources. (7) A permanent advisory national planning board to serve as a general staff for the President. It was suggested that this board consist of not more than five members appointed by and responsible to the President, with a rotating panel of consultants and a skeleton staff made up of government personnel and others brought in for special inquiries.

This permanent board and its staff would serve as a clearing house for significant plans of many types developed in federal,

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state, or local service—by public or private or quasi-public agencies. Appropriate powers of fact-finding and facilities for plan analysis would be granted the board. At present, no such national agency exists, and there is often serious difficulty in obtaining the necessary data regarding important plans or projects in actual operation among 175,000 governmental bodies and many other quasi-public groups, industrial, research, or otherwise.

A mere card catalogue of all projects would be of little value for this purpose, but an intelligent understanding of the main lines and types of planning research would be of high value, not only for those engaged in such tasks but for governing officials charged with the final duty of formulating and administering policies.

The board would have the function of tendering its friendly offices as a coördinator of various federal plans, and of federal and state or local plans, or other types of plans where closer cooperation might seem desirable and feasible. For this purpose, conferences and consultations would be useful through individuals and through continuing committees for the analysis of conflicting or unrelated plans, and toward constructive efforts to bring into closer harmony broad plans of action not adequately organized with reference to each other.

The coördinating activities of the board would lie in several overlapping fields, of which two may be cited: (1) functional coordination such as that recommended by the water-resources section in Part I of the report and exemplified in the work of the water-planning committee; (2) geographical or jurisdictional coordination as between local, state, regional, and federal planning agencies. In a two dimensional figure of this sort, it is obviously impossible to put any one activity under a single heading, and groups or committees set up to further coördination in general must function to some extent in other fields.

Planning agencies have already been developed in a number of cabinet and other federal offices, and it is to be anticipated that more will be set up. Since the division of functions among the several departments is a result of historical growth rather than of planning, "departmental planning" may run counter to "functional" planning. This same difficulty exists in bureau organization, but to such a small extent as to be practically negligible. The establishment of inter-bureau or other planning divisions would

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contribute greatly to the sound development of national planning. A national board and its staff would encourage and welcome such agencies where they are not now found, coöperate with those in active operation, endeavor to bring together lines of planning that seemed to run too far apart or even unwittingly at variance with each other, and in general would use its good offices to bring about the best understanding among planners and the highest and best use of all such research agencies for the common national welfare as seen in the domain of planning. In this field, it may be observed in passing that the intelligence and vision of a board and its staff, the respect and confidence they enjoy among groups whose intimate coöperation is indispensable, will be far more effective than statutory powers or bristling governmental sanctions.

The various planning activities going on within departments will continue on an even greater scale than heretofore. The government bureaus will always be planning in their special fields. Further, there are many questions which cut across the boundaries of established departments, as in the case of land, water, and mineral resources, which are discussed in the text of this report. In such cases, the necessary planning requires coöperation, and the very existence of a central planning agency facilitates coöperation in many ways.

But every cabinet member is the head of a huge going concern which he must administer and for which he is responsible. Cabinet members are overburdened with a bewildering variety of administrative duties and are confronted with an overwhelming mass of decisions which cannot be postponed. They are also drawn into the discussion of urgent national problems upon which action is imminent, and in which their relations to the President, to Congress, and to the public are such as to entail upon them the heaviest and gravest responsibilities.

In the sense of having ultimate political and administrative responsibility, the cabinet members are themselves a final planning council acting with the President and the Congress; but in the technical sense they may advantageously be served and strengthened by an agency more detached from the stress of daily commitments and obligations. A technical general staff has already been found useful both in public and in private business, and might well be adapted to national governmental purposes. It is equally important that attention be directed to the planning enterprises

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and studies under way in various quasi-public enterprises and institutions, and to the desirability of relating those different plans to each other more rationally.

Some of the possibilities in coördinated planning of all three types—administrative, functional, and jurisdictional—have been explored during the last year by the National Planning Board and the National Resources Board. Through the land-planning committee, with representatives from Agriculture and the Interior, interdepartmental coördination in land-use studies has been pushed forward. Through the Mississippi Valley committee and the water-planning committee, a functional approach to planning has been developed; and through the board's interest in state planning, new coördination of state and federal programs has been facilitated.

The flexibility and economy of these types of planning organization have been proved through the efforts of recent months to prepare the land, water, and mineral reports. With a small central staff, necessary funds, and the hearty coöperation of numerous federal, state, and private agencies, needed basic data and policy recommendations can be developed with speed, economy, and assurance.

One of the duties imposed upon the National Resources Board is that of encouraging and stimulating interest in various forms of planning—state, local, and regional. Judging from the experience of the last year, this is a field of very lively and keen interest. Over forty state planning boards sprang into existence almost as if merely awaiting the suggestion. Regional planning agencies were likewise developed with great enthusiasm, while the work of city boards was rejuvenated, especially during the period of assistance afforded by the generosity of the Civil Works Administration. It is clear that there is a wide range of necessary activity in the interchange of information and experience regarding planning systems, and in assisting groups anxious to undertake planning in the most effective manner. Decentralization of planning activity is essential to the healthy growth of those local and individual interests upon which public support and understanding rest. It is also essential in the development of the planning movement to develop responsibility in state and local officials and to find new leaders and enthusiasts.

It would further be the function of the permanent board to initiate independent lines of inquiry into various aspects of a

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national program, contemplating the wisest use of our national resources, and to present the results of its work to the President, with such findings and recommendations or alternative recommendations as might be indicated by comprehensive research and mature reflection; and for such use as the responsible governing agencies of the nation might deem appropriate under all the circumstances. A discussion of some possible types of inquiry is found in earlier paragraphs of the report. It cannot be too strongly emphasized that the rôle of such an agency would be advisory to those in positions of political power and responsibility, with the right and the duty to make the broad decisions in national affairs.

A planning board might facilitate the interchange of experience and information regarding a wide variety of planning devices in many lines and on many levels; it might help to bring together planners and their plans, lest they drift apart or fall afoul of each other; it might reach out in pioneering spirit and explore new possibilities or suggest new devices by which America might advance more swiftly and surely.

Standing apart from political and administrative power and responsibility, but in close touch with the chief executive and under the control of the political powers that be, such a group of men would have large opportunity for collecting the basic facts and for mature reflection upon national trends, emerging problems and possibilities, and might well contribute to those in responsible control facts, interpretations, and suggestions of far-reaching significance.

This is not the time, nor was I directed, to discuss the pros and cons of planning, but I may perhaps be pardoned for referring to a few points, leaving the documents for further statement of my position.

There are three outstanding considerations in looking at plans for planning: (1) the necessity and value of coördinating our national and local policies instead of allowing them to drift apart or pull against each other, with disastrous effect; (2) the value of looking forward in national life, of considering in advance rather than afterward, of preventive measures as well as remedial; (3) the value of basing plans upon the most authentic collection and analysis of the facts.

Down to the turn of the nineteenth century, no country had

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done more extensive national planning than the United States. Our program, first of all, was based on the greatest heresy of the time, namely, that governmental arrangements or constitutions could be planned and made. The program included the abolition of hereditary government and the substitution of democracy, the adoption of the federal system through the Constitution (itself a piece of economic-political planning), a land system reaching from the abolition of primogeniture and entail to the homestead act, the American system of tariff. After the Civil War, the United States led in large-scale business planning through powerful industrial combinations.

Our planning has not been coördinated, however, and in a time when coördination becomes essential, the difficulties of disjointed planning become evident. I quote from the report of the National Resources Board:

> It thus appears that there is need for government economic planning, not to replace business planning, but to render services to the general public, and to business itself, which business cannot render. Business cannot satisfy the wants of people who are unable to pay prices that are profitable in the long run, however pressing and important these wants are. Business cannot master the troubles it produces for itself by the widening of markets and the spread of combinations. Business cannot protect itself effectively against the business-cycle hazard. Business cannot maintain equilibrium when the automatic mechanism of markets in which all prices are flexible has been thrown out of gear by the development of a large group of inflexible prices. When the Government attempts planning in these fields, it is attacking problems of enormous difficulty with which men can learn to deal effectively only by careful analysis and well-designed experiment. But in trying to find solutions for these problems, the Government would not be making inexpert attempts to do what business accomplishes. So far as government succeeded in finding solutions, it would be broadening and making safer the field of private enterprise.

It is an error to conclude that all planning involves regimentation of a deadening nature. I am not referring now to the objections of those who think of regimentation as an interference with their robber-baron privilege of private exploitation and oppression, but to those who sincerely believe that there is danger of sacrificing something that is valuable in civilization. Dr. Wesley C. Mitchell has discussed President Hoover's identification of planning and regimentation in the December number of the *Political Science Quarterly*, and I have done likewise in the February issue of the *American Political Science Review*.

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Wise planning makes provision for decentralization as well as for unification, for territorial and individual decentralization, for independent criticism, judgment, and initiative, for preserving and creating free areas of human activity. The zoning of power is as important in political as in economic organization. We may plan indeed, for fuller liberty—and indeed are now so planning.

Sound planning is not based on control of everything, but of certain strategic points in a working system. Control of these points holds the system in balance, reconciling order, justice, liberty. These points change from time to time, sometimes peacefully and sometimes violently. At various times, political societies have found it necessary to deal with landowners, with slavery, with army authorities, with the church, with labor or industrial captains, with racial groups, readjusting the power system to the new interests and values of the new time. This is of the essence of political cohesion and function.

The best planning will find these strategic points, shown by the social directives of the time, with least delay, and seize no more points than are necessary for the purpose in mind. Insight, sagacity, inventiveness, facility in coöperation and management, are far more important here than the club or the prison. Force is only too often the result of impatience. What often happens is: (1) change is too long delayed; (2) the readjusters violently seize more than they need; and (3) eventually the readjusters restore what they would not have taken if they had been wiser. To find these points and to utilize them as *foci* of social control in the light of the social values of the time is the highest task of intelligent national policy—the acid task of statesmanship.

If, however, there are those who believe that our liberties are in jeopardy, I rejoice that they speak out, that they organize and agitate in support of their judgments, for only in this way may our liberties be maintained. We cannot have freedom if men tamely submit to what they believe is dangerous and wrong. There can be no greater threat to liberty than absence of free and full discussion of opposing views, political, social, and economic. Already Russia, Italy, Germany, and Austria have forbidden free public consideration of public questions; and if democratic states adopt the same policy, a new era opens—an era when we abandon discussion for clubs and guns, hoping in the rhythm of the club and the statistical sputter of the machine-gun to find a better guide to

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action. It would even be legally possible for the Liberty League and the American Civil Liberties Union to merge their forces, although I am not setting this down as a visible trend.

I cannot refrain from saying, however, that some of those who declare that our liberties are lost seem to be thinking of liberty as if it were a shield for private rather than public welfare. Nor can it be forgotten that there are even some who look upon efficient government itself as a menace to liberty. A former president of the United States Chamber of Commerce, not speaking, however, for that organization, once declared: "The best public servant is the worst one. A thoroughly first-rate man in public service is corrosive. He eats holes in our liberties. The better he is and the longer he stays, the greater is the danger."[3]

Obviously, there is no magic in the mere word "planning"—neither white nor black magic. Nor is there any mystic charm in a planning mechanism or board *per se*, any more than there would be charm in a National Drifting Board. But intelligent factual study of national economy and programs is of vital importance in every political society, and it is a task to which students of social processes and mechanisms will be called upon to contribute. One of the most encouraging experiences of the National Resources Board was the advice given generously by the National Academy of Science and the Social Science Research Council on the rôle of science in national planning.

Our democratic system is based upon the principle that the gains of civilization are essentially mass gains and should be diffused throughout the people as promptly and equitably as possible. With this end in view, there is reason to believe that systematic, forward-looking planning would facilitate the adoption of such policies regarding our natural and human resources as would best serve this basic purpose of our system, increasing our output and providing for sounder distribution.

I am not unmindful of the complexities and difficulties in the way, but dangers lie around as well as ahead, from non-action as well as action. We cannot proceed as if nothing had happened in recent years, or could ever happen again. Our doctrines of liberty, equality, and democracy are not to be regarded as legal phrases to be paraded and celebrated on memorial occasions. They

[3] "A Plea for Inefficiency in Government," *Nation's Business*, Vol. 16, p. 20 (1928).

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have meaning only as expressed in the general welfare of our people, in an American standard of living, in an American set of values. Conditions have developed that masses of people will not quietly endure forever, and should not endure. No modern social structure is secure that does not promise more to the body and soul of those who feel themselves disinherited by the present order of things.

Every man is entitled to his own opinion, and I have no desire to thrust my views on others, but perhaps I may be permitted to say quietly as a student of government for a disgraceful number of years and not by nature an alarmist, that especially since returning from Europe last summer, I do not share the complaisance of those who look forward to a world but little changed. Without essaying the rôle of a prophet, I may say that I anticipate fundamental changes in the scientific, technological, political, and industrial order—changes that will alter many of the present-day and historic social patterns and remake them in new, and perhaps to some, unwelcome forms. The mold in which the modern state was cast is broken or is breaking. But the way is open for us to reconstruct a finer type of life, if we can pioneer our way through, over, and around difficulties as nobly as did our fathers.

Planning in a democracy is a coöperative enterprise, requiring widespread sympathy and support, beyond party and beyond region. Business may brake or block it; labor, agriculture, the middle class, may brake or block it. But the danger is that we drift away from planning, not into a blissful heaven of politics and economics, to live forever with golden harps and only an occasional Lucifer, but to a point where force mounts the throne and writes a plan in blood and steel. In the language of President Hoover's Committee on Recent Social Trends:

> The alternative to constructive social initiative may conceivably be a prolongation of a policy of drift and some readjustment as time goes on. More definite alternatives, however, are urged by dictatorial systems in which the factors of force and violence may loom large. In such cases, the basic decisions are frankly imposed by power groups, and violence may subordinate technical intelligence in social guidance. Unless there can be a more impressive integration of social skills and fusing of social purposes than is revealed by recent trends, there can be no assurance that these alternatives with their accompaniments of violent revolution, dark periods of serious repression of libertarian and democratic forms, the proscription and loss of many useful elements in the present productive system, can be averted.

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Americans do not stand at the broken end of a worn-out way. Avenues of greater opportunity than ever open before us. The natural and human assets of the country give us the means to provide a higher standard of life and a fuller realization of essential human values, more equitably diffused than ever before. But this is precisely the time in which the necessary adjustments cannot be made by drift and chance, but imperatively require construction and invention of a high and distinguished order, nobly directed toward the common goal of that public weal which has always been the promise of American life.

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THE CLASSIFICATION OF INTERNATIONAL ORGANIZATIONS, I

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I

Classification is regarded by some as a very elementary and a very barren scientific device or method. For those who attach most importance to applied science, and to the achievement of practical ends, classification seems a dry and futile procedure. For those likewise who insist upon the importance of moral standards and purposes, the brutally empirical inductive process of classification seems inhuman, possibly even anti-social.

That classification is an elementary task of science, in the sense of occurring early in the whole scientific process, no one could deny, albeit only some one who has had immediate and serious experience in classification can appreciate the advanced problems, both of theory and of application, which can be encountered therein. From the point of view of human interest, something would depend upon what is being classified, whether pearls or potatoes, for example, although it would seem to be an implied tenet of pure science that no knowledge of the universe is without value and that we are not able to say beforehand how important a given piece of knowledge will turn out to be. As for whether classification is fruitless, this likewise would seem to turn wholly upon the use to which it is put. Even such a practical and potentially moral procedure as exhortation may be directed to unimportant or even vicious ends; perhaps a method not inherently vicious, but merely neutral, may be devoted to useful ends.

Classification, then, seems to promise valuable results when applied to socially important subject-matter, as a means to the end of dealing more effectively therewith, as a step in the process of manipulating that subject-matter to important social ends. Indeed, any student who has been trained at all in general scientific method, or in the method and technique of any special science today, would be likely to turn the statement around. He would insist that no fruitful manipulation of any body of subject-matter, no intellectual mastery of any given body of data, and no effective application of principles to any subject-matter or to any spiritual

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entities involved is possible without full use of that elementary but indispensable procedure of classification.

As a problem of pure scientific method, there is, perhaps, no call for this discussion here. It is inserted, however, not merely with such general thoughts in mind, but because there seems to be a great need today to invoke the process of analysis and classification in the study of international organization, including, of course, international law in so far as the latter may be involved therein, and because it seems desirable to call attention to that need and make a tentative effort toward satisfying it. The field of international organization has been characterized recently, probably with considerable accuracy, as a jungle or a "wilderness."[1] If this be a sound indictment, it is because writers on the subjects included within the field either have not been able or have not sufficiently tried to classify the data therein and bring order out of the chaos. They have approached the study without sufficient equipment in analytical political science, with too strong a legalistic bias, or too strong social emotions, or they have neglected the task because too much preoccupied with mere descriptive and historical treatment. It is time these defects were remedied.[2]

II

It has become quite common today to speak of "international organization," or even "international government," in the abstract, or by the use of the generic term. Reference is made even to *the* international organization or *the existing* international organization, as though there were one great and only one single system of international organization in the world today. From here it is but a short step, in ideas at least, to a concept of the world government and the world state.

In a measure, this is a gain, in contrast to the earlier quite literal and unreflective reference to existing specific concrete international institutions—the Conference of London, the German-American Claims Commission, the Danube Commission, or what not. The emergence of the concept of international organization

[1] P. C. Jessup, in *American Journal of International Law*, Vol. 26, No. 4 (October, 1932), p. 910.

[2] Responsibility for the confusion prevailing in the field must be shared with the scientists by the practitioners, who have been even more muddle-headed than the former in their thoughts about these matters.

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as such, above the specific cases or embodiments thereof, constitutes a step in advance—indeed one of the most important in the history of political science.[3]

This development has, however, accentuated somewhat, or at least coincided with, the neglect of analysis and classification already referred to. Just as many observers have continued to deal with "international organizations" without much attempt at grouping these institutions in any order or system, so others have talked of "international organization" without subdividing that concept usefully or rationally into its component parts. This latter was not a necessary consequence of the employment of the generic term, for its users might well pass on to further analysis of its content; but it has in fact occurred in some quarters.

The greatest provocation for these comments, however, and the chief basis of this brief study of the way out of the situation, will be found in four documents, not by any means unknown to students of international organization, but not, it seems, adequately exploited hitherto in this connection. These are (1) the *Handbook of International Organizations*, compiled by the International Bureaux Section of the Secretariat of the League of Nations, and published by the League,[4] (2) the list of *Organizations and Commissions of the League of Nations*,[5] (3) the *Staff List of the Secretariat*,[6] and (4) the similar *List of the Permanent Staff of the International Labor Office*,[7] all published likewise by the League. To these might be added other documentary materials,[8]

[3] On these matters, see brief discussion in E. C. Mower, *International Government* (1931), p. 3.

[4] League of Nations, *Handbook of International Organizations*, 1929. A supplement to the *Handbook* was published in 1931, and there is published every three months a *Quarterly Bulletin of Information on the Work of International Organizations*. These are to be understood as forming part of the material in the *Handbook*, although the *Quarterly Bulletin* gives little data on the official organizations or, particularly, upon their organization (for the distinction between the official and unofficial organizations, see below, near note 45).

[5] In League of Nations, *Monthly Summary*, Vol. XIV, No. 2 (February, 1934), p. 49.

[6] In League of Nations, *Official Journal*, XIV Year, No. 10, Part II (October, 1933), p. 1259.

[7] In same, p. 1280.

[8] Such as the budget of the League, in same, p. 1188, and the staff list of the Registry of the Permanent Court of International Justice, in *Ninth Annual Report of the Permanent Court of International Justice* (*Publications of the Permanent Court of International Justice*, Series E, No. 9), pp. 2–34.

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but these alone would constitute a sufficient basis for the study in hand. When it is discovered that neither the League itself nor the Labor Office appears in the *Handbook*,[9] that the classification of public organizations used therein results in elevating three quite peculiar institutions to first place in the list,[10] and that in the main list are enumerated indiscriminately, and all on the same footing, such disparate institutions as (in order named) the International Institute of Agriculture, the International Conference on Private Law Affecting Air Questions, the International Technical Committee of Legal Experts on Air Questions, and the Permanent Court of Arbitration,[11] the incitement to sound analysis and classification is all the more acute.

III

A question must be raised at the outset concerning the nature and formal relations of any international "organization" which it is proposed to include. What is meant by an organization in this sense? What tests define its existence or non-existence, its distinct existence from its existence as, so to speak, part of something else?

An organization in the sense in which the term is here used—waiving closer examination of the "international" element for the moment—consists fundamentally of an association or union of nations established or recognized by them for the purpose of realizing a common end. Such an association or union is partly subjective and partly objective in character; it may be very loose or very close in degree, but while it never amounts to a fusing of the two states in a physical sense, yet something more is involved than a mere abstract or imaginary union. It seems clear also that a mere factual community of interest between two states is not enough to satisfy the concept; recognition and acceptance of that situation is needed to bring the phenomenon over into the field of international law and coöperation, although any action of creating an international organization must almost certainly rest upon such preëxisting community of interest.[12]

[9] They are, of course, intentionally omitted (for reasons given in *Handbook*, p. 5), but the result on the picture of existing international organizations is none the less striking.

[10] *Handbook*, p. 9. See also discussion below, near note 75.

[11] *Handbook*, p. 9.

[12] For further discussion of the relation between the factual and legal elements of the situation, see below, note 54. By the definition given, we are in effect discussing here no less general a phenomenon than international federation, an element of

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On the other hand, the end to be attained may be merely the common support of a given principle or the maintenance of a position of inaction, rather than the taking of any overt action, though loyalty to any particular ideal or doctrine is almost certain to emerge in the form of outward activity.[13] Similarly, the union may attempt to operate through the member-states and their agents rather than through any agents of its own; or, if an attempt is made to set up such agents, they may consist of one individual who in turn may be a national of one of the members or not, or of numerous individuals selected by and representing the members or selected on other grounds and of any nationality.[14] In any case, the union of states is the essential element in the organization, and the agency, which is sometimes confused with the organization itself, and perhaps entitled to be so regarded in a secondary and

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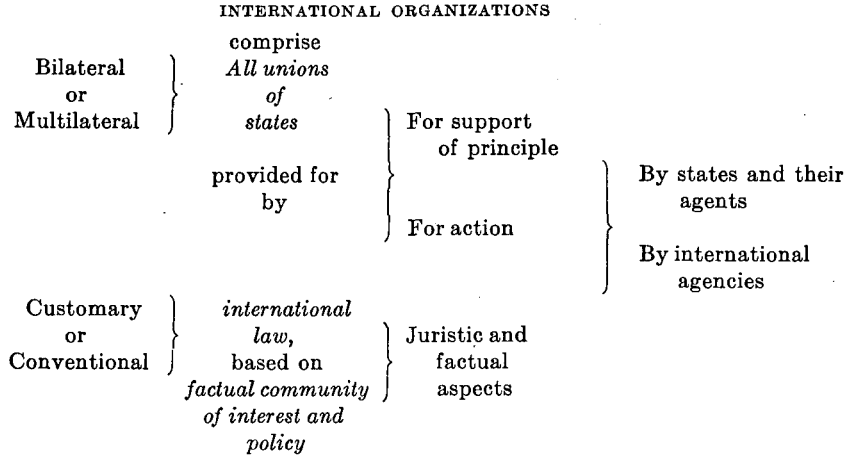
which is present in all international organization. This aspect of the situation will not, however, be stressed. The whole concept might be summed up in the following chart:



[13] For an example of a union professing to be formed primarily for the support of a principle, see the so-called Holy Alliance (of 1815): *British and Foreign State Papers*, Vol. III, p. 211. The way in which this position resulted in overt action is well known.

[14] This problem has been very acute recently in connection with the personnel of the League assigned to administrative work. See League of Nations, *Official Journal*, Special Supplement No. 88, p. 51, etc. On the problem in general, see N. L. Hill, *International Administration* (1931), p. 201. One type of union of states, the alliance, traditionally possesses no common agency for its operation. For this and other reasons, we shall hear no more of this particular form of international federation here.

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derived sense, is strictly only the expression, or even merely the tool, thereof.

It would necessarily follow that such a union, to be considered as "an international organization," must be distinct from any other such union, and still more that a distinct international agency, in order to be considered in this light, must be the sole agency of its supporting union. That is to say, if a given union is found to consist both in international law and in fact, by the terms of its constitution and the actual practice of its members, of the same states which make up another union (*sic*), it seems impossible to consider that there are two distinct organizations present; if the constitutional documents hold that there is identity of membership, and the states act upon this basis, it seems erroneous to speak otherwise because of a plurality of such documents or divergent systems of administrative agencies or instrumentalities.[15] Or if a given agency is but one of two or more agencies maintained by the same union, it would be impossible to consider that agency (or the union supporting it) as a distinct organization, in addition to the other agencies maintained by that union (or its union anything beyond the union supporting all those agencies taken together). The converse of these propositions would likewise hold good; that is, where diversities of union membership are found, there are not one but several organizations present. In cases where the same agency is supported and utilized by two or more unions,[16] there would likewise seem to be two or more organizations present in spite of the unity of the agency, the union of the states in law and fact being fundamental as a criterion, rather than the agency. This would all be particularly important if a numerical count of existing international organizations were to be attempted, but it is also important in forming any picture of what organizations exist, and of the relations existing among them.

The foregoing analysis places emphasis upon the existence and composition of the international union and, in an incidental way,

[15] Thus, a stipulation of identity not lived up to in practice would not produce identity nor an identity of participants in two distinct legal systems. The mere fact that the same states belong to two unions is not decisive if they belong under distinct legal documents which define distinct memberships. Identity of subject-matter would count still less.

[16] For example, the Assembly of the League of Nations is used by the League, the Labor Organization, and the union of the Permanent Court of International Justice for acting upon budget, elections, etc.

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upon the existence and activity of the agency of the union. Would not attention to the purely legal element in the situation effect an economy of effort and also greater accuracy? As has been suggested, an interstate agreement must exist at the bottom of all such unions, providing for its existence and operation. Should not the principal attention be devoted to this agreement itself? And would that not be the best way to clarify and correct certain erroneous ideas sometimes held concerning such institutions?[17]

The answer seems to be in the negative. Such unions may exist, not indeed without any such interstate agreement, but without any single formal documentary constitution,[18] or with constitutions which give very inadequate ideas of their activities,[19] and in such cases the suggested test would be misleading. Many interstate agreements exist, on the other hand, which do not create any international organization except in the most elementary sense (in the sense in which every treaty, and indeed every accepted rule of even common international law, creates such organization), and here such a test is insufficient. What is the main point, however, is that even where such institutions exist upon the basis of a formal constitution, it is not the legal elements in the situation, the mutual rights and obligations of the parties, much less the text expressing that legal element, that constitutes the organization, but the union of states, partly juristic but also largely practical in nature. It is not what the organization is constitutionally and legally authorized to do, or even obligated to do, but what it actually does, that determines its real nature and significance.

What does this mean, however, for the problem of overlapping or divergent memberships? Or what of the statement that two unions of identical membership are really one, except in cases where two distinct constitutions exist, defining and serving two distinct purposes? It seems that here also the importance of the

[17] For examples of such legalistic treatment, see A. P. Fachiri, *Permanent Court of International Justice* (2nd ed., 1932). This is to be distinguished from treatment of the legalistic aspect of international unions as, frankly, but one aspect thereof, as in J. Ray, *Commentaire du Pacte de la Société des Nations* (1930).

[18] Such was the situation of the Pan-American Union prior to 1928. See United States Department of State, *Report of the Delegates of the United States to the Sixth International Conference of American States* (1928), pp. 3–8; such, for that matter, is the situation still, failing ratification of the Convention of 1928.

[19] Such seems to be true of the League today. See amount of space given in W. Schücking and H. Wehberg, *Satzung des Völkerbundes* (3rd ed., 1931), to League activities beyond the strict terms of the Covenant.

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text is, at least, less than might be supposed. Waiving the case where states seem to have been received into an organization contrary to the text of the constitution,[20] there are numerous other cases where non-members, in the strict legal sense, participate actively in the organization,[21] and also cases where legal members do not participate actively.[22] The bare legalistic picture of the situation is hardly adequate here. So when it is felt that two unions of identical membership are distinct when they have distinct constitutions, the impression seems to be sound, not merely because of the distinctness of the legal texts, but because of the distinctness of the systems of practical coöperation also. Indeed, the very member states might be regarded as different member states in their capacities as participants in the two divergent systems.[23]

Finally, the nature of the concept of "membership" in any such organization deserves some attention. Primarily, it is an element on the subjective, formal, legalistic side of the problem: those states are "members" which are nominally so regarded by their fellow-members, in accordance with the legal requirements for membership. But on the more objective side, things may look very different: the only sense in which certain states may seem to belong to a given organization lies in the fact that they are to some extent controlled thereby, or, if the other side of the situation is examined, actual control of the organization may turn out to be vested in a few members,[24] or, even where the law on control coincides with the law on membership, the financial control may rest in limited hands,[25] or the actual influence in the determination of policy and activity on the part of the organization may be con-

[20] See the "admission" of Germany and other states to the International Labor Organization in 1919. Société des Nations, *Conférence Internationale du Travail, Premiere Session Annuelle*, 1920, pp. 15, 21, 25.

[21] For the most notable case, of course, see U. P. Hubbard, *Coöperation of the United States with the League of Nations* (1931).

[22] On inactivity of some League member-states, see W. H. Kelchner, *Latin American Relations with the League of Nations* (1929), p. 138.

[23] Thus Germany as a member-state of the League is a very different juristic entity from Germany as a member-state of the Universal Postal Union.

[24] See provisions for predominant membership or control in the League (Covenant, Art. IV) and the International Labor Organization (Constitution, Art. 393).

[25] See provisions in the International Institute of Agriculture Convention (Art. X) and the provisions or facts concerning support of the International Institute for the Unification of Private Law, the International Educational Cinematographic Institute, and the International Institute of Intellectual Coöperation, in *Handbook*, pp. 39 and 76, and League budget for 1933 (as cited above, note 8), p. 1258.

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centrated in a few powers. The problem is more or less analogous to that of the nationality of a corporation below the level of the state.[26] The answer seems to be complicated, here as there. Nominal legal and actual or practical conditions must both be taken into account; as such, an organization possesses, ineluctably, two aspects, legal and factual, and inasmuch as these two may diverge at any given moment, no certain and simple answer can be given to the problem.

The documents referred to above contain many illustrations of these propositions. Thus if it be agreed that not only does membership in the League of Nations carry membership in the International Labor Organization,[27] and that this is the only way in which membership therein can be acquired,[28] and that loss of League membership involves loss of Labor Organization membership,[29] it would seem that there really existed only one organization, whatever it is to be called. The same might be said of the International Health Organization,[30] the Communications and Transit Organization,[31] and the Economic and Financial Organization,[32] although here the possibilities of membership distinct from League membership are even less than in the former case, while the problem of the identity of the organization is a good deal more complicated.[33]

Similarly, there are many cases where the "organizations" listed are in effect not distinct international organizations at all, but merely so many agencies of one supreme organization. It would seem that this is true of all of the organizations listed in the document entitled "Organizations and Commissions of the League of Nations," and that this fact is attested by the concluding phrase of that title.[34] The same would seem to hold for all

[26] C. C. Hyde, *International Law* (1922), §794.

[27] Labor Organization Constitution, Art. 387.

[28] There being no provision in the Labor Constitution for selection of members. See above, note 20.

[29] A matter on which there has as yet been given no definite opinion. See M. O. Hudson, "Opinion on Membership in the Labor Organization," in document cited above (note 20), p. 211.

[30] On membership, see League of Nations, *Official Journal, Special Supplement January, 1921*, pp. 12, 15.

[31] Same, p. 14.

[32] Same, p. 13.

[33] See structural details in document cited above (note 5), pp. 50–56.

[34] Document, as cited above (note 5), p. 49.

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the units listed under the Secretariat and Labor Office in the Staff Lists and the Budget of the League.[35]

Where non-member states participate, upon the invitation or with the consent of member states, in certain League activities such as disarmament or health work, the situation seems to change, and a new and distinct union comes into existence for the purpose in hand. The members of one preëxisting union join with non-members to form another union. The result is a loose aggregate of unions for various objects.[36] Such, before the League was established, was the situation—and still is the situation—in the field of what is commonly called international administration (although closer examination will reveal that not merely administrative, but also legislative and judicial, or generic governmental, organization and action were involved). In fact this is simply another, less familiar, aspect of the problem of universality, so often discussed in connection with the League:[37] as long as each of the single organizations is less than universal, all are likely to vary in membership and constitute distinct unions, except for cases where accidentally the members of different unions happen to be the same.

The case of the Permanent Court of International Justice is more complicated. It is legally possible for states to adhere to the Statute of the Court without becoming members of the League,[38] and at the present time one state is a "member" of the Court (in this sense) while not a member of the League.[39] Similarly, certain states members of the League are not members of the Court.[40] On the other hand, the League members, acting as such, elect the judges and pay the bills of the Court, and certain other lines of connection, historical and actual, may be traced between the two institutions.[41] On the whole, it seems that the Court must be regarded as legally distinct (as it is independent in operation), though largely integrated with the League structurally and practically.

[35] Documents cited above (note 6–8).

[36] P. Guggenheim, *Der Völkerbund* (1932), pp. 60, 211, 272–273.

[37] League of Nations, Assembly, *Records*, Plenary, 1925, pp. 52, 54, and 1926, p. 52.

[38] Permanent Court of International Justice, *Publications*, Series D., No. 1, pp. 6, 7.

[39] Brazil; same, Series E., No. 8, pp. 45, 49.

[40] Argentina, Guatemala, Honduras, Liberia, Mexico, Nicaragua, Peru.

[41] American Society of International Law, *Proceedings*, 1931, p. 90.

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Among the many organizations listed in the *Handbook*, there are some which seem to overlap in the same way, but this problem is one which arises chiefly in connection with the League and has, perhaps, been sufficiently illustrated already. The case where such problems arise most extensively outside of the League is that of the Pan American Union, whose many bureaus and commissions and conferences rather closely duplicate the rambling League system.[42]

IV

Two serious questions arise in connection with the international character of the organizations under discussion. The first is a query as to their national, or official national, character, and the second a question as to the extent or degree of their international character. These may be considered briefly at this point.

At bottom, any social "organization" must consist of a combination of two or more individuals or groups of individuals, the individual being the irreducible unit, but also a sufficiently self-motivated unit for the purpose of social life. The organization would be rendered international by the introduction of an international element in its composition.[43] Now that element might be introduced by the presence in the membership of two individuals of divergent nationality; but would this satisfy the true test for such an organization? Can an organization of two or more individuals or groups of individuals of divergent nationality be properly regarded as an "international" organization?

To some extent, this is merely a verbal problem which requires and deserves little attention; one might employ the appellation "international organization" with at least reasonable literary license to organizations made up merely of individuals of different nationalities.[44] The question involves more than this, however. Is it logically sound to regard in that light such an organization? Does such an organization really possess such a character? It is

[42] Pan American Union, *Bulletin*, April, 1930, April, 1931, April, 1932 (items by the director-general, Dr. L. S. Rowe).

[43] Though not in its activity; thus a French school located in France but drawing students in part from Italy would hardly rank as an international *organization*.

[44] The question of whether a "private" organization operating for pecuniary profit should be included also arises. The fact that the organization earns, or even seeks to earn, a financial profit seems to affect the situation in no way, any more than operation at a loss would do. Various international organizations receive some pecuniary returns, even though these are exceeded by their expenses.

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not believed that it does. Unless an organization consists of two or more states or nations as such,[45] unless it depends for its action upon the action of national states as units and pretends to act with their authority, it is not called upon to satisfy the tests which any such organization must meet, that is, respect for national sovereignty, action by virtue of the operation of concordant national sovereignties, and so on. This relieves it—the private organization—of a great deal of responsibility, but by the same token such an organization has no power over or among the states as such, and this diminishes somewhat, if without entirely destroying, its importance. The other type of thing may be important, but it is not international in the strict sense of the term.[46]

In other words, official international organizations are what is here at issue.[47] It seems doubtful whether the term should be applied at all to the other sort of thing. By this test, the enormous mass of organizations listed in the *Handbook* would simply drop out of the reckoning. They might be regarded as unofficial world organizations or private cosmopolitan organizations, and as such very important for their services to humanity and their encouragement of official international organization proper, and as deserving attention and sympathetic understanding as such; but they are not organizations of states or nations.[48]

Secondly, it would appear that some notice must be taken of the fact that there is wide divergence among international organ-

[45] Understanding by "state" an organized group of individuals over which no other such group has authority not legally defeasible by the former at its discretion on the ground of self-preservation.

[46] It should be added that the unofficial organizations are not envisaged by Art. XXIV of the Covenant, relating to the unification of external organizations with the League; nor was the International Bureaux Section at first expected to deal with such organizations. That the Section turned to these organizations, and that they now fill nineteen-twentieths of the space in the *Handbook*, is attributable to their quantitative, if not qualitative, importance, and to a decision taken in 1921 in recognition of this fact. League of Nations, *Official Journal*, II Year, No. 2 (March, 1921), p. 177.

[47] There exist, of course, a number of organizations wherein the elements are mixed. Private organizations receive official approval, and even financial support. Governments participate in what thus become semi-official organizations. Public officials form organizations as—so to speak—individuals interested in certain work (police work, legislation). See *Handbook*, pp. 143, 177–178, 37–38, 16. The classification of certain specific organizations might be very difficult, but it would seem that the facts are not such as to alter the general principles set forth above.

[48] See above, note 46.

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izations in point of the number of their members. In other words, there are bilateral and multilateral organizations, or, as some prefer, organizations bipartite and multipartite. Of how much importance is this difference?

It would seem that in strict legal theory a bilateral union of states is, after all, an international organization in the proper meaning of that concept, and entitled to be classified as such.[49] For various practical reasons, such organizations are omitted from the *Handbook*, and it must be admitted that certain bilateral organizations seem to be very narrow and peculiar in the circumstances of their origin and traceable more to local conditions and reactions than to factors such as would explain or justify international organization in general.[50] But in a true juridical sense, this attitude seems open to criticism. At the same time, the great multilateral unions seem more significant both as to their foundations and their potential services to the international community. The bilateral unions cannot be entirely excluded, but must be regarded as less important practically than the others.

(*To be concluded in the next issue*)

[49] Compare the International Joint Commission maintained by the United States and Canada. United States Department of State, *Register*, 1932, p. 283.

[50] See the International Water Commission, United States and Mexico, in same, p. 285.

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National Stamp-Tax Laws and State Instrumentalities.* The rule that the national government may not burden the governmental agencies of the states by taxation is generally familiar to students of constitutional law. An interesting phase of the development of this doctrine is found in judicial and administrative rulings on the immunity of state agencies under the national stamp-tax laws.

The Early History of the Stamp Tax as Applied to State Judicial Documents. Stamps had been used as a means of securing revenue for nearly two centuries when such a method of taxation was suggested for the United States in 1797. The stamp tax originated in Holland in 1624, when, during a time of "dire necessity," the States-General offered a reward to anyone who would invent a new kind of tax, and someone proposed "the requiring of stamps on documents and writings having a legal operation or forming necessary steps in suits in the law courts."[1] In 1694, England adopted this method of raising revenue. Congress first resorted to the stamp tax on legal instruments in acts of 1797[2] and 1813.[3]

These early stamp acts went no further than to provide that certain instruments and writings should not "be pleaded or given in evidence in any court, or admitted in any court to be available in law or equity" unless or until duly stamped.[4] Certificates of protest and other notarial certificates were among the "certain instruments" enumerated.

Under the act of 1797, the question arose in a Virginia district court whether an unstamped bond might be admitted in evidence. The court decided to pass the question on to the General Court as a point of "novelty and difficulty." The General Court ruled that the bond "ought not to be permitted to go in evidence to the jury . . . because . . . [it was] not stamped" in accordance with the provision of the national stamp-tax act.[5] Only a meager account of the case is given, but an explanatory note of the court reporter is of some interest: "The question in this case was, whether the act of Congress was constitutional or not. Some persons had supposed that Congress had no power to change the rules of evidence in the state courts: the General Court, however, were of the opinion that, as Congress had power to lay and collect taxes . . . and to make all laws necessary and proper for carrying into

* This article has been adapted from a chapter in the writer's doctoral dissertation on *National Taxation of State Instrumentalities*, presented at the University of Illinois in 1934.

[1] Smith, *The United States Federal Internal Tax History from 1861 to 1871* (1914), 145.

[2] *1 Stat. at L.* 527, 531.

[3] *3 Stat. at L.* 77, 79.

[4] *Id.*

[5] Woodson v. Randolph, 1 Va. Cas. 128 (1800).

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execution the specified powers, the aforesaid act was within the limits of their chartered authority."[6]

Under neither the act of 1797 nor that of 1813 were there apparently any other cases involving the question whether Congress might require stamps on instruments introduced in evidence in state courts, perhaps because there may have been a general understanding that Congress intended the term "any court" to include only the national courts. If the term had been widely construed to apply to the state courts in this early period when the boundaries of state sovereignty were being so zealously guarded, it hardly seems probable that some one of the several states would not have bitterly disputed the power of Congress to prescribe "rules of evidence" for state courts. On the other hand, the doctrine that neither the nation nor the states may tax the governmental agencies of the other had not yet become a general rule of constitutional law.[7] As the dividing line between state and national powers in this respect had not yet been clearly drawn, perhaps the states found no valid reason for objecting to the small stamp duties imposed upon certain instruments introduced in evidence in the local courts.

National Stamp Tax Legislation During the Civil War Period. After the repeal of the act of 1813, Congress did not again turn for revenue to stamp duties on legal instruments until 1862, when a clause was inserted in the revenue act of July 1 which provided that writs, "or other original process" by which suits were commenced "in any court of record, either law or equity," were to be subject to a stamp tax of fifty cents. It was further provided, however, "that no writ, summons, or other process issued by a justice of the peace, or issued in any criminal or other suits commenced by the United States or any state," were to be subject to the payment of stamp duties. A stamp tax was also imposed upon the probate of wills, letters of administration, notarial protests, upon bonds "for indemnifying any person who shall have become bound or engaged as surety for the . . . performance of the duties of any office, and to account for money received by virtue thereof [bonds required in legal proceedings not taxed]," and upon all kinds of certificates and telegraphic dispatches.[8]

There was no provision in the above act which stipulated that unstamped instruments might not be admitted as evidence in any court, although when the provision for the taxation of writs was read in the Senate, Senator J. W. Grimes of Iowa seemed to be undecided as to

[6] *Id.*, 129.

[7] The doctrine that the states may not interfere with federal agencies by taxation was first laid down by the Supreme Court in McCulloch v. Maryland, 4 Wheat. 316 (1819). The Supreme Court did not affirm the converse of this principle until 1871, when it ruled in Collector v. Day, 11 Wall. 113, that the national government might not rightfully tax the salaries of state officers.

[8] *12 Stat. at L.* 432, 481–484.

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whether the term "by which a suit is commenced in any court of record" should apply to the state courts. Senator W. P. Fessenden of Maine replied in the affirmative, stating that "law-suits . . . are a luxury," and that "in all systems of indirect taxation, the processes of courts are taxed." Senator Grimes asserted that "these little suits in the state courts are necessities," and he expressed the desire that the provision be amended to exclude state process; but no further action was taken in the matter.[9]

The revenue act of July 14, 1862,[10] provided that all instruments, documents, and papers should be stamped properly before being admitted as evidence in any court. The revenue act of June 30, 1864,[11] in addition to the duties imposed by the acts of 1862, further provided that stamp taxes should be imposed upon writs "issued by a court not of record" where the amount in controversy was $100 or over; upon confessions of judgment for $100 or over, except where the tax had been paid upon the writ at the beginning of the suit; upon "writs or other process on appeals from justices' courts or other courts of inferior jurisdiction to a court of record;" and upon warrants of distress, where the amount claimed exceeded fifty cents. It was provided further that it should "not be lawful to record any instrument, document, or paper required by law to be stamped, unless . . . stamps . . . [were] affixed," and the recordings of unstamped instruments were to be "utterly void" and were not to be used in evidence. Section 154 of the act required "that all official instruments, documents, and papers, issued or used by the officers of the United States government," should be exempt from the stamp duties,[12] but this provision was later amended by the act of July 13, 1866, to extend exemption as well to instruments and documents issued by state and local officers, provided such issuance was in the exercise of "functions strictly belonging to them in their ordinary governmental and municipal capacity."[13]

The act, amendatory to existing revenue laws, of March 2, 1867, removed entirely the stamp duties from legal documents, probate of wills and letters testamentary, letters of administration, and bonds of administrators or guardians, where the value of the estate and real and personal effects did not exceed $1,000.[14] By the act of June 6, 1872,[15] all

[9] *Cong. Globe*, 37 Cong., 2 Sess., 2348, 2518 (1862).
[10] *12 Stat. at L.* 543, 561.
[11] *13 Stat. at L.* 234, 302, 311.
[12] *Id.*, 302.
[13] *14 Stat. at L.* 98, 141. Thirty-nine years later, the U. S. Supreme Court adopted this rule for determining the tax-immunity of state agencies, in South Carolina v. United States. See note 93, *infra*.
[14] *Id.*, 471, 475.
[15] *17 Stat. at L.* 230, 256.

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the taxes imposed by stamps under the act of June 30, 1864,[16] and the several acts amendatory thereto,[17] were repealed, with the exception of the two-cent tax on bank drafts, checks, and orders.

The above acts form the general statutory background of the history of the stamp tax on legal documents during the years 1862–72. Before beginning a discussion of the interpretations given to these statutes by the highest courts of the several states, one may obtain a general idea of the manner in which the stamp taxes were administered by examining the reports and regulations of the commissioner of internal revenue.

Administration of the Stamp Taxes During the Civil War Period. In the report for the fiscal year ending June 30, 1863, with reference to the acts of 1862,[18] it was said that the stamp duties on documents and instruments of evidence were "among the most satisfactory branches of our excise law." Cheaply and easily collected, the stamp taxes were the "most cheerfully borne" of all the special war taxes.[19] The commissioner recommended that all writs, summonses, and other process for the commencement of civil actions before justices of the peace, and writs of execution issued by such justices for the seizure or sale of goods, "be made subject to a small stamp duty," and he concluded with the further recommendation that the sweeping provisions of the law invalidating all improperly stamped documents be retained "as furnishing the only sufficient security against evasion."[20]

Numerous administrative rulings and regulations with respect to stamp-tax provisions affecting state and local agencies appeared in 1863. Instruments were classified as either taxable or not-taxable, although no official explanations were given of why certain instruments were placed in one or the other of the two classes. Nevertheless it is interesting to note that nearly a decade before Collector v. Day[20a] federal administrative officers were taking the view that certain instruments should be free of federal tax burden, apparently because they were intimately involved in the business of state or local governments.

Of the instruments which might now be regarded, in view of Collector v. Day and subsequent similar cases,[20b] as essential state or local governmental agencies not taxable by Congress, the following were ruled *taxable* by Treasury officials in 1863:[20c] agreements or contracts for teaching

[16] Note 11, *supra.*
[17] Notes 13, 14, *supra.*
[18] Notes 8, 10, *supra.*
[19] *Report of the Commissioner of Internal Revenue* (1863), 11.
[20] *Id.*, 13.
[20a] Note 7, *supra.*
[20b] See cases cited, notes 86, 92, 93, *infra.*
[20c] Boutwell, *A Manual of the Direct and Excise System of the United States* (1863), 339–354; Estee, *The Exise Tax Law* (1863), 293; Smith, *op. cit.*, 145 *et seq.*

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services between teachers and school directors, and between contractors and directors for the erection or repairing of school-houses; appraisements of property made by free-holders selected by county sheriffs; bonds issued by counties, cities, and towns; official bonds of sheriffs, constables, executors, guardians, and administrators; bonds of collectors of school taxes, and of treasurers of school districts; certificates of qualifications of school teachers, justices of the peace, commissioners of deeds, and notaries public; certificates of tax sales; tax-redemption certificates; birth, marriage, and death certificates; certificates of election of county superintendents of schools; certificates issued to grand and petit jurors; certificates issued by masters in chancery, certified transcripts of judgments; deeds of real estate sold by a sheriff under process of law, and deeds of land made under decrees of masters in chancery; instruments transferring suits from justices of the peace to superior courts; jurats of affidavits taken before justices of the peace; orders to town treasurers on state treasurers for money due to or belonging to towns; probate of wills; and writs of *scire facias*.

The following instruments were in 1863 ruled *not taxable*:[20d] acknowledgments of deeds or other instruments made before justices of the peace, notaries, or other qualified officers; bonds issued by state governments; certificates, orders, drafts, and warrants issued for the purpose of carrying on the "internal business" of state and local governments; checks drawn by state treasurers on state funds; executive warrants drawn on state treasurers; letters of guardianship; orders or drafts by school directors for the payment of teachers' salaries; petitions to a court for the formation of new school districts, or for the removal of school directors; warrants issued to collectors to collect school taxes; warrants or drafts by state superintendents of schools on the state treasury; writs of habeas corpus, error, and *certiorari*.

The commissioner's report for 1864 proposed that the stamp duties be extended to an even larger class of legal instruments than those affected by the acts of 1862. He asserted "that a judicious enlargement of [the stamp-tax schedule] to embrace instruments of evidence not described in it, would be preferable to any other mode of taxation equally fruitful of revenue."[21] However, the report for 1865 was of a somewhat different tone than its predecessors. The commissioner seemed to be undecided as to the "proper rule" to adopt "in the case of official papers issuing from the executive departments of the several states, as well as from county and municipal offices," and he recommended legislation which would regulate this matter of "large and growing importance."[22]

[20d] Boutwell, *op. cit.*, 233–354; Estee, *op. cit.*, 291.
[21] *Report of the Commissioner of Internal Revenue* (1864), 13.
[22] *Id.* (1865), 16.

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In the report for 1866, in commenting on the fact that the courts of several of the states had questioned "the constitutionality of so much of the law as requires the use of stamps upon writs," the commissioner stated that he did not believe that the legal objections to the duties were well grounded, although he gave no reasons for his opinion.[23]

Further difficulty in administering the stamp tax on legal instruments under the laws of 1862 was shown by complaints of various congressmen during that year. Roscoe Conkling of New York declared that the scarcity of the stamp supply was working a great hardship upon the people of his district. "I know," remarked Conkling, "that persons desiring to execute deeds—men who had made arrangements to buy or sell farms—have been running around to neighbors and lawyers inquiring as to the consequences of dispensing with the stamp, and have been kept in hot water [since the enactment of the tax]." Conkling pointed out that the amount of the stamp tax on legal documents was "not worth talking about." Such taxes only annoyed the poeple, keeping them in a state of trepidation and really doing "no good whatever." T. M. Pomeroy of New York said there were "no stamps . . . for protests," and that it was impossible in many towns "to prove a majority of the ordinary business transactions"; while Samuel Shellabarger of Ohio warned that the deficiency in the stamp supply might, with regard to instruments of evidence, "arrest entirely . . . proceedings in courts of justice." Justin S. Morrill of Vermont reassured his uneasy colleagues in the House, however, stating that there were sufficient stamps "to supply the whole country this side of the Rocky Mountains," and that existing deficiencies would soon be met.[24]

While there was some discussion of the general propriety of a stamp tax on the judicial process of state courts, no congressman raised the question at this time whether such a tax would be an unconstitutional interference with the functions of such agencies; although revenue officers apparently were somewhat uncertain as to the proper course to follow in administering such a tax. However, any views which federal officials may have held on the question doubtless received a severe jolt when news came of the cold reception given the stamp tax in the superior courts of the several states.

Judicial Decisions on Taxation of Court Processes, 1862–72. Perhaps the first stamp-tax case arising under the revenue acts of the Civil War period was that of Gorman v. Steed,[25] in which the court of appeals of West Virginia upheld a lower court's refusal to quash an *alias* summons

[23] *Id.* (1866), xviii–xix.

[24] *Cong. Globe*, 37 Cong., 3 Sess., 40 (1862).

[25] 1 W. Va. 1 (1864). In 1863, the commissioner of internal revenue had ruled that "when a writ or summons is returned without service, a stamp is required on the *alias*, if issued." Estee, *op. cit.*, 294.

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which had not been properly stamped. The court dismissed the case with the brief comment that as the law required revenue stamps to be affixed only to "original process," a *mesne* process, such as an *alias* summons, plainly would not come within the meaning of the stamp-tax provisions. The court, therefore, was not forced to render an opinion upon the validity of the clause which provided only for the stamping of "original process."

Similarly, other state courts held that the following documents were not "original process" and not subject to the national stamp-tax duties: writs of error,[26] of *certiorari*,[27] and of *scire facias*;[28] appeal papers in an appeal from the judgment of a justice of the peace;[29] precepts of a register of wills, directing an issue as to the validity of a will;[30] and process against a garnishee, in aid of a suit wherein execution had been returned *nulla bona*.[31] In the case of Warren v. Paul,[32] however, where the court below had dismissed a suit because certain papers were not properly stamped, Justice Perkins of the Indiana supreme court met squarely the question whether Congress may rightfully tax the legal proceedings in state courts, and for the first time asserted the converse of the rule of McCulloch v. Maryland,[33] viz., that the national government may not constitutionally interfere by means of taxation with the operation of state agencies.

Without precedents to guide him in writing the opinion of the court, Justice Perkins founded this new doctrine upon his own interpretation of the national Constitution, and upon the works of such writers as Adam Smith, John Stuart Mill, Jeremy Bentham, and Joseph Story. He first reviewed the power of Congress to tax, pointing out that the powers of Congress are delegated by the Constitution and that the powers not so delegated to the United States, nor forbidden to the states, are reserved to the states respectively, or to the people. This constitutional distribution of powers was evidence, said the court, that the state governments were intended to exist concurrently with the national government, possessed of "independent powers" beyond the control of that government, "for they, and their people, possess all powers not granted to the *United States*."[34]

[26] Hinchman, etc., v. Rutan, 31 N. J. 496 (1864).
[27] Pierce v. Huddleston, 10 Minn. 131 (1865).
[28] Smyth v. Ripley, 32 Conn. 156 (1864).
[29] Dorman v. Bayley, 10 Minn. 383 (1865). Cf. Hugus v. Strickler, 19 Iowa 413 (1865).
[30] Shay v. Henk *et al.*, 49 Pa. St. 79 (1865).
[31] Bear v. Hays, 36 Ill. 280 (1865).
[32] 22 Ind. 276 (1864).
[33] Note 7, *supra*.
[34] 22 Ind. at 277.

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The court then pointed out that the Constitution seemed "to contemplate three kinds of taxes as within the power of Congress," viz., direct taxes, imposts, and excises. "Such taxes Congress may lay and collect; and it certainly is not clear that it can any other. . . . The stamp tax upon legal documents does not fall within either of these classes. It is a tax on the right to justice."[35] But granting that Congress did have the power to impose stamp taxes, however unjust they might be, it did not follow, concluded the court, that such duties could be imposed upon the legal proceedings in state courts. On the other hand, it was "manifest all the way through the Constitution" that state governments were to have judicial tribunals of their own. Such tribunals should not be subjected to the burdensome control of Congress, because this "would be incompatible with their free existence." Just as it had been held that the states might not interfere with the instrumentalities of the national government, so the argument applied "with full force to the exemption of state governments from federal legislative interference."[36] The court said:[37] "There must be some limit to the power of Congress to lay stamp taxes. Suppose a state to form a new . . . constitution, could Congress declare that it should be void unless stamped with a federal stamp? Can Congress require state legislatures to stamp their bills, journals, laws . . . in order that they shall be valid? . . . It seems to result as necessary to harmony of operation between the federal and state governments, that the federal government must be limited, in its right to lay and collect stamp taxes, to the citizens, and their transactions as such. . . . The federal government may, perhaps, take, by taxation, most of the property in a state, if exigencies require, but it has not a right, by direct or indirect means, to annihilate the functions of the state government."

Such a conclusion seemed to be a corollary of the principle laid down in McCulloch v. Maryland, because if national bank-notes were immune from state taxation, why, argued the court, should not state agencies be free of national legislative interference? Although Chief Justice Marshall had clearly indicated in McCulloch v. Maryland that he did not approve of such a corollary,[38] it does, nevertheless, seem to be a

[35] *Id.* at 278.

[36] *Id.* at 279.

[37] *Id.* at 279–281.

[38] In McCulloch v. Maryland (4 Wheat. at 435), Justice Marshall said: "It has . . . been insisted, that, as the power of taxation in the general and state governments is acknowledged to be concurrent, every argument which would sustain the right of the general government to tax banks chartered by the states, will equally sustain the right of the states to tax banks chartered by the general government. But the two cases are not on the same reason. The people of all the states have created the general government, and have conferred upon it the general power of taxation.

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reasonable conclusion if one is to admit the coördinate nature of the Union.[39]

In Fifield v. Close,[40] where the validity of an unstamped summons issued by a justice of the peace was upheld, the supreme court of Michigan, after reviewing the broad taxing power of Congress, warned that if the power to tax state judicial process were admitted, Congress might easily put an end to the entire action of the state courts by imposing a prohibitive tax on such process. The supreme court of Alabama upheld the validity of an unstamped writ of inquiry issued by a state court, asserting that Congress had no authority to interfere with the state judiciary, to which had been intrusted the vast field of the law of property, equity jurisdiction, and the rights and duties flowing from civil and domestic relations.[41] On similar grounds, the supreme courts of other states upheld the tax-immunity of papers or process for surety of the peace,[42] transcripts of judgments,[43] and writs of execution.[44]

Several state courts, however, refused to sustain the immunity of state judicial process from the national stamp duties. The superior court of New York ruled that an unstamped summons issued by a state court was "irregular and void." The act of Congress, in requiring such stamps, was not regarded as improper interference with the powers or functions of the state courts because the duties were not imposed upon the courts, but rather upon the suitor, who, as a citizen, was "subject to taxation by the paramount authority of the United States."[45] The court failed to consider that the *effect* of such a tax, although paid by the suitor, might conceivably destroy the effective operation of the state judiciary.[46]

The people of all the states, and the states themselves, are represented in Congress, and, by their representatives, exercise this power. When they tax the chartered institutions of the states, they tax their constituents; and these taxes must be uniform. But when a state taxes the operations of the government of the United States, it acts upon institutions created, not by their own constituents, but by people over whom they claim no control. It acts upon the measures of a government created by others as well as themselves, for the benefit of others in common with themselves. The difference is that which always exists, and always must exist, between the action of the whole on a part, and the action of a part on the whole—between the laws of a government declared to be supreme, and those of a government which, when in opposition to those laws, is not supreme."

[39] Cf. Willoughby, *Constitutional Law of the United States* (1929), I, 144.

[40] 15 Mich. 504 (1867). See also Jones, etc., v. The Estate of Keep, 19 Wis. 390 (1865).

[41] Smith v. Short, 40 Ala. 385 (1867).

[42] Deloohery v. The State, 27 Ind. 521 (1867).

[43] Black v. Nettles, 25 Ark. 606 (1869). Cf. Mussellman v. Mauk, 18 Iowa 239 (1865).

[44] The Union Bank v. C. A. Hill *et al.*, 41 Tenn. 325 (1866).

[45] The German Liederkranz v. Schiemann, 25 How. Pr. (N. Y.) 388 (1863).

[46] Cf. Jones, etc., v. The Estate of Keep, note 40, *supra*. Also Ford v. Clinton, 25 Iowa 157 (1868).

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Although not upholding the stamp tax directly, the supreme court of Connecticut did not question its validity when it ruled that the original process by which adverse proceedings were commenced before a probate court included the petition to the court and the citation issued for the appearance of the respondent, and that one or the other of these two papers had to bear a revenue stamp.[47] In a later case, the same court, by deciding that the copy of a writ left in service need not contain a copy or memorandum of the stamp placed on the original writ, implied that the original writ must necessarily have borne a stamp.[48]

As noted above, Congress repealed the tax on writs and other original process by the act of July 13, 1866,[49] and never since has such a tax law been enacted. It is to be regretted that none of the controversies over the validity of the tax reached the federal courts, although it seems probable that they, too, in view of the almost unanimous protests of the state courts, might have held the tax on state judicial process invalid. This supposition is supported by the fact that in 1871, only a few years after the stamp-tax cases arose, the United States Supreme Court held invalid the national income tax as imposed upon the salaries of state officers.[50]

Although Congress had removed the stamp duties on writs in 1866, the tax remained upon certain other judicial documents, viz., the probate of wills, letters of administration, and letters testamentary. Without comment on the constitutionality of the tax, some courts required that the probate of wills be stamped;[51] others held that the absence of the necessary stamps on letters of administration, and on papers in the proceedings for the appointment of an administrator, were fatal to his appointment.[52] On the other hand, certificates authenticating depositions were held to be legal documents constituting a part of legal proceedings and not taxable.[53] Similarly, no revenue stamp was required upon an award of arbitrators to make it valid.[54]

A summary of the stamp-tax decisions on writs and other judicial documents during the period 1862–72 reveals that the state courts held two conflicting views with regard to writs. In the first place, the greater number held that the stamp tax on writs was invalid because of its interference with the effective operation of such courts, which were governmental agencies not subject to the taxing jurisdiction of the national

[47] James G. Hotchkiss. Appeal from Probate, '32 Conn. 353 (1865).
[48] Tucker v. Potter, 35 Conn. 43 (1868).
[49] Note 13, *supra*.
[50] Note 7, *supra*.
[51] Dayton v. Mintzer, 22 Minn. 393 (1876).
[52] Blake v. Hall, 19 La. Ann. 49 (1867).
[53] Prather v. Pritchard, 26 Ind. 65 (1866).
[54] Celley v. Gray, 37 Vt. 136 (1864).

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government. A few courts, in the second place, ruled that the tax was not imposed upon writs directly, but rather upon the suitor, and consequently was a valid exercise of the national taxing power. The few cases which arose concerning the probate of wills, letters of administration, and letters testamentary held such documents to be subject to the stamp duties, although the courts might have placed them in the non-taxable class if the validity of the duties had been contested directly. The courts apparently agreed that papers or process for surety of the peace, notarial certificates, and transcripts of judgments were exempt from the stamp duties.

National Taxation of Public, Non-Judicial Documents. A study of the stamp duties on public, non-judicial documents such as certificates, official bonds, and orders for the payment of money reveals several interesting cases arising under the revenue acts of the Civil War period. It has been observed that by the act of July 13, 1866,[55] Congress removed the tax from "official instruments" issued by a state, county, or municipal corporation in the exercise of strictly governmental functions. Following this action, a few controversies arose over the interpretations given by the commissioner of internal revenue to the term "official instruments."

An Indiana case[56] involved the question of whether stamps were required on orders drawn on a county treasury for the payment of bounties given by a county to volunteers mustered into the United States army. It was held that county orders were "official instruments," and hence expressly exempted. Similarly, bonds issued by a county did not require revenue stamps in order to be valid.[57] In some cases, the courts, regardless of the fact that "official instruments" had been expressly exempted by Congress, held that certain documents were not subject to the stamp duties because they were a means employed by the states in the execution of their respective powers. In a Wisconsin case,[58] it appeared that land had been sold for the non-payment of taxes. Each tax certificate bore a five-cent revenue stamp, and this sum was included in the purchase price of the land. It was contended, therefore, that the tax sales were invalid. The court sustained this contention, ruling that Congress had no power to impose stamp duties on certificates issued at a sale made under the authority of the state. This court had previously held that the law imposing a duty on tax deeds issued under the state laws was invalid because Congress had no power, without the con-

[55] Note 13, *supra*.

[56] Nave, etc., v. King, 27 Ind. 356 (1866).

[57] Ralls County v. Douglas, 105 U. S. 728 (1881).

[58] Barden v. Supervisors of Columbia County, 33 Wis. 445 (1873).

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sent of the states, "to tax the means or instruments devised by the states for the purpose of collecting their own revenues."[59]

In State, etc., v. Gaton,[60] the supreme court of Indiana reached the decision that Congress had no authority to impose a tax upon an official bond given to a state by one of its officers, and the validity of a sheriff's official bond was therefore unaffected by the fact that it did not bear a national revenue stamp. In an Iowa case,[61] however, a contrary view was expressed by the court in its refusal to hold valid an unstamped bond of a municipal officer. The court admitted that the national government had no power to interfere with the constitutional means employed by a state in the execution of its powers, but held that affixing a stamp to a bond was not an "official act." The person assuming the office was required to do that as an individual, not as an officer.[62]

National Taxation of Public and Private Documents Introduced as Evidence in State Courts. Perhaps the most troublesome provisions of all the revenue acts of the Civil War period were the clauses of the acts of 1862[63] and 1864[64] which provided that all instruments, documents, and papers must be properly stamped before being recorded, or admitted as evidence *in any court.* The highest courts of at least twenty-four states held these clauses to be an unconstitutional interference by Congress in the local affairs of the states. Questions arose concerning the admissibility in evidence in the state courts of a great variety of unstamped instruments such as bills of sale, contracts, mortgages, deeds, promissory notes, lien contracts, and the like. In general, it may be said that the court decisions on the validity of the evidence clauses seem to fall roughly into two classes: (1) an overwhelming majority of the decisions held that the tax on instruments of evidence introduced in the state courts was invalid, and that the term "any court" applied only to the national courts; and (2) other state courts adhered strictly to the letter of the law and refused to admit unstamped instruments in evidence.

Of the cases in the first class, perhaps one of the most interesting was that of Sammons v. Holloway,[65] where, in holding that the want of a revenue stamp on a promissory note would not affect its admissibility and force as evidence, the court ruled that Congress had neither the power to prescribe rules of evidence for state courts, nor the right to make void matters which belonged exclusively to state jurisdiction. Justice Cooley

[59] Sayles v. Davis, 22 Wis. 217, 220–221 (1867); also Delorme v. Ferk, 24 Wis. 201 (1869).

[60] 32 Ind. 1 (1869).

[61] City of Muscatine v. Sterneman, 30 Iowa 526 (1870).

[62] See note 81, *infra.*

[63] Note 10, *supra.*

[64] Note 11, *supra.*

[65] 21 Mich. 162 (1870).

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stated that it was "not admissible under our political system" for Congress to make void a contract made between two citizens in the manner provided by state law. In an Illinois case of a similar nature,[66] the court declared that if our federal system was to be preserved "as the wise and good men fashioned it," with the state and national governments confined to their respective spheres of power, then Congress had no authority to decide what might be admitted as evidence in a state court. Such matters properly fell within the province of the state legislature.[67] The supreme court of California took the view that the national government had no right to convert the state courts into "tax-gatherers" for the Union,[68] while in Griffin v. Ranney, etc.,[69] the opinion was that if the doctrine that Congress might not tax judicial proceedings was the law of the land, it then applied to instruments of evidence as well as to the process of state courts.[70]

Of the courts interpreting the evidence clauses as being applicable to both the national and state courts, the supreme court of Pennsylvania reached a decision[71] which conflicted with "the whole current of the decisions in other states."[72] The court not only construed the term "any court" to include the state courts, but it went even farther and sustained the right of Congress to impose such a tax by reason of having the power to employ any necessary and proper means to carry out its constitutional functions.[73]

In summarizing the steps in the early development of the doctrine that Congress had no power to tax the governmental agencies of the states, it is noted that (1) all cases involving the validity of the national stamp tax on judicial process and other legal instruments issued or utilized by the state courts arose in the state courts themselves; (2) the supreme court of Indiana originated the rule that the national government may not tax state instrumentalities, regarding it as a corollary of the rule laid down by Chief Justice Marshall in McCulloch v. Maryland that the states might not tax the agencies of the national government;[74] (3) the several state courts were almost unanimous in holding that all judicial documents issued by the state courts were not taxable by the national government, and that national taxation of public and private

[66] Latham v. Smith, 45 Ill. 29 (1867).

[67] Cf. U. S. Express Co. v. Haines, 48 Ill. 248 (1868).

[68] Duffy v. Hobson, 40 Calif. 240 (1870); also Haight v. Grist, 64 N. C. 739 (1870).

[69] 35 Conn. 239 (1868).

[70] Cf. also People, etc., v. Gates, 43 N. Y. 40 (1870); Carpenter, etc., v. Schnelling, 97 Mass. 452 (1867); Clemens *et al.* v. Conrad, 19 Mich. 169 (1869).

[71] The Chartiers & Robinson Turnpike Co. v. McNamara, 72 Pa. St. 278 (1872).

[72] 7 *Albany Law Journal*, 50 (1873).

[73] Cf. Wayman v. Torreyson, 4 Nev. 619 (1868).

[74] Note 38, *supra*.

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documents introduced as evidence in state courts was unconstitutional interference in the local affairs of the states; (4) public, non-judicial documents and documents which formed a part of legal proceedings, such as the awards of arbitrators and notarial certificates, were held not taxable; (5) the probate of wills, letters of administration, and letters testamentary were, in *obiter dicta*, held taxable.

The National Stamp Tax and State Instrumentalities During the Period 1898–02. After the repeal of the stamp-tax duties in 1872, Congress did not again turn to this source for revenue until 1898. The revenue act of that year,[75] in so far as legal instruments were concerned, was a reënactment of the act of July 13, 1866.[76] In comparison with the Civil War period, there were only a few controversies arising under the provisions of the act of 1898, for several reasons, apparently: (1) the provisions of the act were not as broad in extent as those first enacted during the earlier period; (2) there was no provision for stamp duties on judicial process; (3) official instruments and documents were exempted if issued by state or local governments in the exercise of strictly "governmental" functions; and (4) the rulings of the commissioner of internal revenue and Treasury decisions provided for exemption of many of the instruments which had been objects of controversy during the earlier period.

A brief summary of the commissioner's rulings follows:[77]

A. Taxable Instruments:

Bonds given by public officers such as sheriffs, clerks, registers or recorders of deeds, county treasurers, and other officers of like character. Also marriage bonds, and bonds of executors and administrators.

Certificates of protest, of all notes and bills of exchange, whether protested by a notary public or any other public officer duly authorized by law. Also certificates of search, when issued for private use.

Bank checks drawn by sheriffs in disbursing funds belonging to private parties realized at sheriffs' sales of property on executions.

Deeds and *mortgages* executed by a sheriff in compliance with a court order, viz., deeds granting, assigning, conveying, or transferring property to a purchaser, such as lands, tenements, or other realty; also assignments of mortgages, and mortgages received by a state from persons to whom state lands had been sold.

Official dispatches, when sent by public officials for the benefit of private persons.

B. Non-Taxable Instruments:

Affidavits and *letters of administration.*

Bonds required in legal proceedings, viz., prosecution and injunction bonds;

[75] 30 *Stat. at L.* 448, 455; repealed by the act of April 12, 1902, 32 *Stat. at L.* 96, 97.

[76] Note 13, *supra.*

[77] *Report of the Commissioner of Internal Revenue* (1898), 87 *et seq.* See also the opinion of Asst. Atty. Gen. Boyd, *id.*, 100 *et seq.*

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bonds upon appeal and writ of error; bonds for costs; bonds for receivers or trustees appointed by courts in causes pending; bonds given in claim and delivery actions for property; bonds filed by courts in obtaining decrees or orders for the sale of real estate; bonds given by guardians.

Certificates issued by state officers in the performance of official duties, viz., certificates of birth, death, health, and marriage; certificates of nomination and all papers or instruments relating to the exercise of the elective franchise; certificates of teachers, and of grain inspectors and weighers; liquor licenses; certificates issued at tax sales, and certificates of redemption from tax sales; certificates required in legal proceedings; certificates of court clerks to the qualifications of notaries public or justices of the peace; certificates of search, when used in the exercise of a governmental function; certificates of acknowledgment of deeds and mortgages.

Court processes: writs, summonses, attachments, subpoenas, warrants, and other court orders.

Checks drawn by officers of states, counties, and municipalities in the discharge of governmental obligations.

Deeds and *mortgages* executed by a sheriff for the right to burial and to erect monuments.

Jurats of a notary public.

Official dispatches sent by state officers in the discharge of governmental functions.

In addition to the rulings of the commissioner, Treasury decisions sustained the tax immunity of bonds given by contractors for government work;[78] also of entries of merchandise,[79] when such merchandise was imported by a municipal library for its own use.

Although no controversies arose over the soundness of the above rulings on *non-taxable* instruments, the validity of the rulings on *taxable* instruments was contested in several cases. While all of the stamp-tax cases were adjudicated in the state courts during the Civil War period, in the period 1898–02 the federal courts were also confronted with the problem of determining the validity of stamp duties imposed upon state agencies.[80] Contrary to the ruling of the commissioner of internal revenue, a federal court held that a notary public, appointed under the laws of a state by the governor, was a state officer employed in the exercise of the governmental functions of a state.[81] Therefore a bond which such an officer was required to execute for the faithful discharge of his duties was an instrument not subject to taxation by Congress. It was contended by counsel that a stamp tax on bonds required of certain officers before they

[78] Treasury Decision (Internal Revenue) 356 (1901).

[79] Treasury Decision 21292 (1899). Cf. Board of Trustees of the University of Illinois v. United States, 289 U. S. 48 (1933).

[80] In the period 1898–1902, several actions were begun by the United States in the federal courts, and a few suits grew out of disputes between citizens of different states.

[81] Bettman v. Warwick, 108 Fed. Rep. 46 (C.C.A., 6th Circuit, 1901).

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might assume the duties of their respective offices was not a tax affecting the functions of government, but the court adopted the view that such a tax was in effect a tax upon the appointee's right to qualify for the office. If Congress were permitted to tax a notary public by requiring a stamp on his official bond, it might tax other state officers in a similar fashion, and there would be no constitutional restriction preventing Congress from imposing taxes so great that no person could qualify for any state office. There was no doubt, said the court, that stamp duties imposed on bonds given by public officials would embarrass and impede the states in the exercise of their governmental functions.

The Supreme Court affirmed this view in Ambrosini v. United States,[82] a case involving the taxability of certain bonds executed to a state and municipality by a private individual as a condition precedent to the issuance of a saloon license. The "dram-shop" act of Illinois and the municipal code of Chicago required the giving of bonds by all applicants to whom liquor licenses were granted. The plaintiff in error in the instant case had given two such bonds as required, but had failed to affix thereto United States revenue stamps. For this offense he was indicted, found guilty, and sentenced to pay a fine. In delivering the opinion of the Court, Chief Justice Miller pointed out that the general assembly of Illinois, in enacting the dram-shop act, had legislated against the evils of the liquor traffic, not by prohibiting, but by regulating it. The state might rightfully do this because such legislation was within the scope of the police power. Bonds were required of applicants as prerequisites to the issue of licenses permitting sales. The granting of the licenses was a strictly governmental function. The giving of the bonds was a part of the same transaction. To tax either would be to impair the efficiency of state and municipal action. Therefore, declared the court, this case came within the general principle that as the states might not tax the agencies of the national government, neither might the latter tax the agencies of the states, and stamp duties imposed on such bonds were invalid.[83]

On the question whether notaries' certificates were subject to the federal stamp duties of the period, there was some diagreement. In one case, a federal court refused to sustain a ruling of the commissioner of internal revenue that the certificate of a notary, issued under his hand and seal and authenticating his official acts, was taxable, because in performing public duties devolved upon him by law the notary was exercising a function which was "intimately connected with the administra-

[82] 187 U. S. 1; 23 Sup. Ct. Rep. 1 (1902).

[83] Cf. United States v. Owens, 100 Fed. Rep. 70 (Dist. Ct., E.D., Mo., 1900); also Treasury Decision (Internal Revenue) 40 (1900). The Treasury Department ruled that bonds given by state officers for alcohol to be used for scientific purposes were not taxable. Treasury Decision 20876 (1899).

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tion of justice."[84] In a later case, however, it was held that a notary's certificate must bear a revenue stamp. The court admitted that Congress had no authority to interfere with the administration of justice in a state, nor to tax the salaries of its officers, but reasoned that under the revenue law a notary was not taxed as a state officer or in any other capacity, because the individual for whose benefit the certificate was made paid both the notary's fee and the stamp tax upon the certificate.[85] The sanctity of the doctrine that "the power to tax involves the power to destroy" was perhaps wisely ignored by the court, although it is remotely possible that Congress might impose so great a tax on the certificates of notaries that their utility would be destroyed, and such action certainly would be an undue interference with a judicial agency of a state.[86]

A deed made by a master commissioner under a decree in foreclosure after a competitive sale was required to bear a revenue stamp.[87] It was contended by counsel that a master's deed should be exempt from stamp duties because it conveyed property which was in the possession and control of the court at the time of conveyance. Furthermore, the deed was made by order of the court. Therefore the statute requiring that revenue stamps be affixed to such deeds was obstructing the operation of a judicial function and should be declared invalid. The court concluded, however, that the deed in question was not a conveyance made by the government, nor did it convey any title, interest, or right held by the government. Upon the grantor was placed the burden of affixing revenue stamps to the deed, and therefore the statute was valid.

There were only a few scattered cases in the state courts under the revenue act of 1898, and most of these were settled in accordance with the rule that Congress had no power to tax state agencies.[88] The commissioner of internal revenue expressed uncertainty as to whether unstamped instruments should be admitted as evidence in the state courts. He admitted that, due to the conflict of state decisions on this question,[89] he was not certain whether tax immunity should be extended to such instruments, the federal courts never having rendered an opinion in the matter.[90]

[84] Stirneman v. Smith, 100 Fed. Rep. 600 (C.C.A., 8th Circuit, 1900).

[85] Sackett v. McCaffrey, 131 Fed. Rep. 219 (C.C.A., 9th Circuit, 1904).

[86] In several recent cases, the Supreme Court, in determining the tax immunity of state agencies, has given some attention to the effect of national tax laws as applied to such agencies. Cf. Willcuts v. Bunn, 282 U. S. 216, 51 Sup. Ct. Rep. 125 (1931); Denman v. Slayton, 282 U. S. 514, 51 Sup. Ct. Rep. 269 (1931).

[87] Farmers' Loan & Trust Co. v. Council Bluffs Gas & Electric Light Co., 90 Fed. Rep. 806 (Circ. Ct., S. D. Iowa, 1898).

[88] Cf. The Magic Packing Co. *et al.* v. Stone-Ordean Wells Co., 158 Ind. 538 (1902); Noble v. Citizens' Bank, etc., 63 Neb. 847 (1902).

[89] *Supra*, note 65 *et seq.* See also Knox v. Rossi, 25 Nev. 96 (1899).

[90] Treasury Decision (Internal Revenue) 474 (1902).

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In comparing the two periods, 1862–72 and 1898–02, with respect to stamp duties on legal instruments, the latter period shows traces of an extension of the rule of exemption of state agencies from national taxation: (1) Congress did not attempt to tax state judicial process, thus removing one cause for the great mass of litigation which arose in this connection during the Civil War period; (2) the commissioner of internal revenue made only a feeble attempt to enforce the provisions of the act of 1898 which required that stamps be affixed to instruments of evidence introduced in the state courts; (3) the growing list of non-taxable instruments[91] issued in 1898 indicates that the exemption of state agencies from national taxation had become a rather well established rule of increasing importance;[92] (4) in 1898, administrative officers in the Treasury Department were beginning to give some attention to the distinction between the *governmental* and *proprietary* functions of a state, a distinction destined to play a very important part in determining future exemption of state agencies from national taxation;[93] (5) although all litigation involving the validity of national stamp duties imposed upon state agencies took place in the state courts during the Civil War period, in the instant period the matter was considered by the national courts as well, and the latter adhered rather closely to the reasoning of the state courts in the early period.

National Stamp Taxes and State Agencies Since 1914. After the repeal of the stamp duties on legal instruments in 1902, Congress did not again resort to such taxes until 1914. The revenue act of this date[94] was similar to the act of 1898 so far as legal instruments were concerned, except that there was no requirement that such instruments should bear revenue stamps before being admitted in evidence in any court. As originally introduced in the House, the bill provided that legal instruments should not be "admitted, or used in evidence in any court," but the Committee

[91] *Supra*, note 77.

[92] During the interval between the Civil War period and 1898, the U. S. Supreme Court had given its approval to this rule in upholding the immunity from national taxation of salaries of state officers, note 7, *supra*; of municipal revenues, United States v. Baltimore & Ohio Railway, 17 Wall. 322 (1872); and of the interest derived from municipal securities, Pollock v. Farmers' Loan & Trust Co., 157 U. S. 584 (1895).

[93] Cf. South Carolina v. United States, 199 U. S. 437, 26 Sup. Ct. Rep. 110 (1905); Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. Rep. 342 (1911); Jamestown & Newport Ferry Co. v. Commissioner of Internal Revenue, 41 Fed. (2d) 920 (C.C.A., 1st Circuit, 1930); United States v. King County, Washington, 281 Fed. Rep. 686 (C.C.A., 9th Circuit, 1922); State of North Dakota v. Olson, Collector, 33 Fed. (2d) 848 (C.C.A., 8th Circuit, 1929); Blair v. Byers, 35 Fed. (2d) 326 (C.C.A., 8th Circuit, 1929).

[94] 38 *Stat. at L.* 745, 757.

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on Ways and Means reported it back with the above clause stricken out, and the alteration was agreed to without discussion.[95]

The language of the act of 1914 expressly exempted all instruments issued by state or local governments when such issuance involved the exercise of a "governmental" function. However, when issued to private parties for personal use, such instruments were required to be stamped if under the provisions of any law they were required to be issued on demand.[96] No cases of any particular significance arose under the stamp-tax provisions of the act of 1914, nor under subsequent revenue acts. The exemptions ruled by the commissioner of internal revenue in 1898[97] have been generally observed by administrative officers since 1914, with a few additions made to the list of non-taxable instruments. All licenses or certificates of authority to engage in any business or occupation, and applications for such licenses or certificates, were held not taxable, viz., marriage, automobile, and liquor dealers' licenses; certificates of authority to insurance companies and agents, and other similar documents.[98] Certificates issued in the interest of the public health, welfare, or safety were held not taxable, such as certificates given by inspectors of steam vessels, locomotives, boilers, power plants, factories, meats, food products, inflammables, and explosives.[99] No stamps were required on reports made to state governments for governmental use,[100] nor upon passage tickets issued to state officers.[101] Exemption was extended also to bonds given to a state or local government and covering contracts for governmental purposes, or for the protection of the state.[102] Certificates issued by a register to administrators showing that they had been appointed as such, a register's certificate to accounts filed in his office,[103] and deeds executed by a state or local government in conveying realty sold for the non-payment of taxes[104] were also held not taxable. In the revenue acts since 1914, Congress has not attempted to provide that revenue stamps be affixed to any instrument which might be issued by state or local governments in the exercise of strictly governmental functions.[105]

[95] *Cong. Record*, 63 Cong., 2 Sess., 16537 (1914).
[96] Treasury Decision (Internal Revenue) 2087 (1914).
[97] *Supra*, note 77.
[98] Treasury Decision (Internal Revenue) 2087 (1914).
[99] *Id.*
[100] *Id.*
[101] Treasury Decision (Internal Revenue) 2867 (1919).
[102] Treasury Decision (Internal Revenue) 2111 (1914).
[103] Treasury Decision (Internal Revenue) 2091 (1914).
[104] Treasury Decision (Internal Revenue) 2867 (1919).
[105] Act of Oct. 3, 1917, 40 *Stat. at L.* 300, 319; Act of Feb. 24, 1919, 40 *Stat. at L.* 1057, 1133; Act of Nov. 3, 1921, 42 *Stat. at L.* 227, 320; Act of June 2, 1924, 43 *Stat. at L.* 253, 332; Act of Feb. 26, 1926, 44 *Stat. at L.* 99; Act of May 29, 1928, 45 *Stat. at L.* 791; Act of June 6, 1932, 47 *Stat. at L.* 169, 272.

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National Stamp Duties Affecting State Agencies Other Than Legal Instruments. Although the constitutionality of the national stamp taxes has frequently been challenged in cases involving legal instruments and documents issued by the state judiciary or state administrative officers, there have been a few occasions when the internal revenue bureau found it necessary to decide upon the applicability of the stamp-tax laws to certain other state agencies, among which were tobacco and oleomargarine. With respect to stamp duties on tobacco, the bureau ruled that charitable or other institutions operated by a state had the right to manufacture any tobacco products without paying duties whenever such products were to be used exclusively by state institutions,[106] and such institutions were not required either to keep books of record, give bond, or comply with other regulations which applied to dealers or manufacturers of tobacco.[107] As to oleomargarine, the bureau ruled that a state agent who colored or directed the coloration of oleomargarine which was to be used in state institutions such as hospitals, penitentiaries, asylums, and other institutions of a similar character, was not subject to the special tax imposed upon oleomargarine manufacturers. Neither was the national stamp tax to be imposed upon oleomargarine colored and used in such institutions.[108]

Conclusion. Although the power to tax may involve the power to destroy, the national stamp-tax laws seem never to have been a serious menace to the existence of the states in the federal system. Most of the litigation involving the application of these laws to state and local agencies arose in the state courts during the Civil War period, and it was generally held that judicial process and all other official public documents were not taxable by the national government. In the stamp-tax provisions of the revenue acts since the Civil War period, Congress has provided exemption for all official documents issued by state or local governments in the exercise of "essential governmental functions." There have been, of course, numerous administrative rulings and several court decisions on the question of whether certain instruments or documents were "official instruments" within the meaning of the statutory provisions.

There is no evidence that any general rule has been followed by the courts or administrative officers in placing certain documents in the "official," non-taxable class. On the other hand, whatever distinction may exist between "official" and "unofficial" documents seems to have been rather arbitrarily determined.[109] It seems safe to conclude, however,

[106] Treasury Decision (Internal Revenue) 736 (1904); also 12 Op. Atty. Gen. 277, 282 (1867).

[107] Treasury Decision (Internal Revenue) 3074 (1920).

[108] Treasury Decision (Internal Revenue) 3021 (1920).

[109] *Supra*, note 77 *et seq.*

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that in view of existing court decisions and administrative rulings with respect to the liability of other state agencies under the federal tax laws, immunity would be extended to all instruments or documents issued by state or local officers in the exercise of what the courts regard as "essential governmental functions." Documents issued in the exercise of proprietary, non-governmental functions would doubtless be held taxable.[110]

Several reasons why official documents issued by state or local governments should not be taxed by the national government have been suggested, the main objection to such taxation being that if the power of Congress to tax such documents were conceded, the power to tax involving the power to destroy, such a power might be utilized to restrict or prohibit many of the ordinary operations of the state judiciary or of administrative officers. It will be recalled that the early Civil War stamp-tax laws provided for specific duties on writs, summonses, and other judicial documents issued by the state courts, and made it unlawful for state officers to record certain unstamped instruments. The same act provided exemption for all "official instruments . . . issued or used by the officers of the United States government."[111] In this act, Congress was obviously discriminating against state agencies. Such discrimination should perhaps not be permitted because it would thus be possible for Congress to employ an exclusive or special stamp tax to burden or prohibit the operation of certain governmental functions of a state.

On the other hand, if the immunity from national stamp-tax laws of official documents issued by state or local governments constituted a grave social problem, or if the national revenue power were seriously impaired by such immunity, a general stamp tax falling alike on official documents issued by both the state and national governments would perhaps not be objectionable. It should be noted that most of the criticism of the doctrine of state tax-immunity has not been inspired by the exemption extended to official documents, but rather by the tax freedom enjoyed by state and local officers and employees, and by the holders of state and local securities. It is said, for example, that exemption of the latter has seriously burdened the national revenue power, encouraged municipal socialism, created a "privileged class" which is "socially undesirable," and caused a scarcity of capital for investment in private enterprises.[112] Such statements, if true, might seem to warrant the removal of immunity from interest derived from state and local securities. However, thus far none of these charges has been hurled at the tax immunity accorded official documents. As there is no evidence that either tax ex-

[110] The cases appearing in note 93, *supra*, might be cited as authorities for this statement.

[111] Note 12, *supra*.

[112] Hardy, *Tax-Exempt Securities and the Surtax* (1926), 12 *et seq.*

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perts or legislators have regarded such immunity as "socially undesirable," or as constituting a grievous burden on the federal revenue power, perhaps official instruments issued by state or local governments should be permitted further to enjoy their present tax immunity, at least until the time shall come when the Supreme Court finds it unnecessary longer to preserve the general doctrine of immunity of the agencies of one government from the taxing power of the other.

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Executive Orders—A Bibliographical Note. Sharp criticism by Chief Justice Hughes and Associate Justice Brandeis of the Supreme Court, in the Eastern Texas oil case, of the haphazard manner in which executive and administrative orders having the force of law are distributed attracted public attention to a much-needed reform which has been advocated at intervals by political scientists. Lack of definite information concerning the issuance of these orders, combined with their rapidly increasing number and importance under the codes of fair competition, are factors in the growing demand that they be published in some definite and available form.

If one consults the *Catalogue of Public Documents*, under the subject "executive orders," one finds the following: "See notes, entries, and lists of references under President of the United States. Executive orders —*also* subjects of orders."[1] The entry under "President of United States," contains the following note: "Executive orders of the President of the United States are printed in separate form at the time of signature. For the separate prints issued during the period of this catalogue, see, in main alphabet, under the subjects referred to in the numerical list below, certain entries with President of United States as author. There is no serial publication which contains all of the executive orders signed by the President, but those on particular subjects are sometimes compiled and issued. Such compilations appear under the special subject involved or the department or bureau issuing the compilation."[2] This entry is followed by a list of the orders issued during the period covered by the catalogue. In the *Monthly Catalogue*, executive orders are listed only by subject under the general title, "President of United States." The price is given, thus making possible their purchase from the Superintendent of Documents.

[1] *71st Congress, 1929–1931* (Washington, Government Printing Office, 1934), p. 903.

[2] *Ibid.*, pp. 2107–2108. A comprehensive compilation of *Codes of Fair Competition* is now being issued by the National Recovery Administration, giving texts of codes, executive and administrative orders, and proclamations relating to the codes.

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Perhaps realizing the need for more definite information on this difficult subject, the Legislative Reference Service of the Library of Congress issued, in July, 1934, a mimeographed list of "Important Executive Orders, March 8, 1933–June 23, 1934."[3]

All of these references are merely to lists of the orders. The most important statement thus far quoted is that "there is no serial publication which contains all of the executive orders signed by the President." The *Checklist of United States Documents, 1789–1909* adds the following item of information: "Executive orders prior to October, 1905, were sometimes printed as presidential papers, but more frequently issued in printed form only by those departments immediately concerned in their promulgation. Since October, 1905, it has been customary for the President to send all executive orders to the Bureau of Rolls and Library, State Department, to be printed on foolscap paper for limited distribution on demand."[4] Executive orders in this form are sent to depositary libraries, where they may be used by students of government; but this distribution certainly does not make them public in the common meaning of that word.

In an article on "Administrative Legislation," published in January, 1920, in the *Michigan Law Review*,[5] Professor John A. Fairlie called attention to the great extent to which public administration in the national government of the United States was controlled by means of administrative regulations or orders, and declared that notwithstanding this fact "comparatively little attention has thus far been given to the methods of their preparation and publication."[6] He emphasized the need "within each department, and in the government service as a whole, for more systematic and uniform methods in the preparation and publication of administrative regulations," as well as for "an official publication which will record all regulations and instructions issued in all branches of the government service."[7]

Questions of forms, terminology, preparation, and publication of executive ordinances, proclamations, and orders were further discussed by Professor James Hart in the appendix to his *Ordinance-Making Powers of the President*, wherein Professor Fairlie was quoted with approval.[8] More recently, the subject was again raised by Frederick F. Blachly and Miriam E. Oatman in *Administrative Legislation and Adjudication*.[9] These authors suggest that all rules and regulations further implementing

[3] *Public Affairs Information Service*, October 6, 1934, p. 15. The list was prepared by W. C. Gilbert.

[4] P. 874.

[5] Vol. 18, pp. 181–200.

[6] P. 197.

[7] P. 200.

[8] (Baltimore, 1925), pp. 315–321.

[9] (Washington, 1934).

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the law be issued by the President, regardless of where they originate. A special bureau should prepare and publish all such rules and regulations, other than unimportant departmental regulations. For this purpose, an official gazette should be established, in which the rules and regulations should be published. In addition, rules and regulations affecting special interests should be published in trade journals as well as in the official gazette. The official gazette and published collections of special rules and regulations should be kept at numerous official depositaries where they would be easily accessible.[10]

Finally, and most definitely to the point, is the article by Erwin N. Griswold on "Government in Ignorance of the Law—A Plea for Better Publication of Executive Legislation," in the December, 1934, issue of the *Harvard Law Review*.[11] Here again the subject is reviewed, but more particularly with reference to the great volume of executive and administrative orders issued during the first year of the National Recovery Administration, in which connection the author quotes from the *Report of the Special Committee on Administrative Law* of the American Bar Association. Criticizing as chaotic "the form of that most important group of legislative pronouncements, the administrative rules and regulations," Mr. Griswold cites English experience to point to a solution of the difficulty. He meets the argument that an official gazette might tend to become merely a federal newspaper by suggesting that provision be made "simply for the systematic and uniform publication of the rules and regulations themselves as they are issued, just as the acts of Congress are now printed in slip form immediately after becoming law." At the end of each year, the rules and regulations should be bound and indexed, with tables showing the effect of the new rules and regulations on statutes and other regulations. Rules of a purely private concern or those relating solely to the internal administration of government departments might well be omitted from publication in official compilation. The public printer is suggested as the proper official to supervise the publication. It is recommended that the Library of Congress prepare a compilation of all regulations in force when the new system goes into effect. A complete index of all rules and regulations in force, similar to the one published every three years in England, would round out the publication program. In order to focus attention on the subject, Mr. Griswold appends to his article a draft bill which contains all of his recommendations in definite form.[12]

It cannot be denied that there is a crying need for governmental action. President Roosevelt himself admitted this in his regular confer-

[10] Pp. 260–261. See also pp. 88–89, 259.
[11] Vol. 48, pp. 198–215.
[12] Pp. 214–215.

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ence with the newspaper men following the criticism in the Supreme Court. Such a publication would not only clarify many administrative problems, but it would also be a boon to all students of government and ought to have their earnest support.[13]

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Governor Pinchot and the Late Magistrate Stubbs.[1] Governor Pinchot's appointment of followers of two powerful politicians to the Philadelphia magistracy came at a time when the entire magisterial system was facing

[13] On January 31, 1935, Representative Celler of New York introduced a bill (H.R. 5154) "to provide for the custody of Federal proclamations, orders, regulations, notices, and other documents, and for the prompt and uniform printing and distribution thereof" (*Congressional Record*, January 31, 1935, p. 1385). While in general the provisions of this bill follow the suggestions proposed in the articles above cited, they differ from them in charging the Archivist of the United States, acting through a division created by him in the National Archives Establishment, with the custody, and together with the Public Printer, with the printing and distribution, of the documents required or authorized to be printed. All such documents are to be printed and distributed by the Government Printing Office in a serial publication designated the "Federal Register," to be distributed daily except Sundays, Mondays, and days following legal holidays. Documents to be published shall include presidential proclamations and executive orders and such other documents as may be required to be published by act of Congress or by executive order issued pursuant to the provisions of this bill. In no case shall comments or news items be authorized to be published. The bill establishes a permanent Administrative Committee of three members consisting of the Archivist, an officer of the Department of Justice designated by the Attorney-General, and the Public Printer. This committee shall prescribe, with the approval of the President, regulations for carrying out the provisions of the act. The legal effect of the publication of these documents is stipulated in the bill.

A copy of the text of the bill was kindly supplied to the writer by Mr. Celler. The bill was approved on February 13 by a House judiciary subcommittee (*N. Y. Times*, Feb. 14).

[1] "Governor Pinchot yesterday paid political debts to two of his supporters in the primary election by naming their lieutenants as magistrates." *Philadelphia Record*, May 24, 1934.

"But what is worse, he has named two men who have been aligned for years with the Vare organization, men who are politicians above everything, and men who received this favor from Pinchot solely as the result of a political horse-trade in the recent primary. Samuel W. Salus turned in his Fourth Ward organization for Pinchot, and Benjamin M. Golder swung his support to the Governor in the northwest wards. These appointments are payment for that support. Just as much so as if the Governor had mailed checks. Pinchot has paid in full." Editorial in *Philadelphia Record*, May 24, 1934.

"Sometimes it seems as if Governor Pinchot disliked Philadelphia and all that concerned it as much as he dislikes the Republican organization here. . . . His action in filling two vacant magistracies suggests such a mood." Editorial in *Philadelphia Evening Bulletin*, May 24, 1934.

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the stiffest criticism from the higher courts, the state bar association, and the more alert lay opinion that it has faced since Magistrate Perri was convicted of extortion and bribery in 1929. Philadelphia magistrates from time immemorial have been charged with partisanship, ignorance, and corruption; and the temper of the present times has begun actively and militantly to react against these shortcomings of a judicial system that is steeped in politics rather than pervaded with a spirit of justice.

The city has twenty-eight magistrates, each of whom is elected for a six-year term by the voters of the entire city, and each is paid a salary of $5,000. Their chief functions are the preliminary examination of persons accused of the more serious crimes, the disposition of lesser offenses, and the trial of small civil cases. In short, any person under arrest is first of all brought before a magistrate's court; there the "judge" decides in the more important cases whether the accused shall be held for grand jury action or discharged; the magistrate himself determines guilt or innocence in cases involving lesser offenses. Because these are courts of first instance, they are often spoken of as "the poor man's courts," but in actuality there is a growing body of intelligent opinion that thinks of these judges as inverted tribunes of the people. This is because the judges are invariably politicians who owe their places to other politicians and to the dominant party organization. They are not required to be lawyers, and they seldom are; their necessary qualification is the ability to win votes in an election, or to have the support of such a person or persons as can do so. This is why these courts are often the center of political activity and may out-Bentham Jeremy Bentham in their concern about the person accused, or his political backers, and in their lack of consideration for the crime or the merits of a case.

When a magistrate dies, the governor is empowered to fill the vacancy by appointment. Three of the Philadelphia magistrates died during the first part of 1934. Governor Pinchot was urged to do what the Philadelphia electorate in its election of magistrates never does, i.e., ignore politics and private considerations and select individuals of high character, intelligence, and legal training. It was argued that this would improve the tone of the minor judiciary, and that the resulting appointees might stand out as shining examples of civic virtue and high public morality. It might be the first long step forward in the elevation of a new kind of individual to the magistracy.

But the choice was not an easy one to make, and it involved more than just the consideration of the magistrate's fitness for the office. For Governor Pinchot was a candidate in the Republican primary for United States senator. He was opposing Senator David A. Reed, whom the Vare organization had endorsed. The fight was a hard one. One of the Vare ward leaders, State Senator Sam Salus, decided to bolt the Vare ticket

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and support the Governor in Salus' own fourth ward. He did just that, and he did it in so masterly a manner that in the primary Pinchot received 3,064 votes to 18 given to Senator Reed. Pinchot lost the nomination in the state, but think what he might have done had more magistrates died just before the primary! Pinchot's word in dealing with politicians was his bond, and in return for Senator Salus' support the Senator was given a brand new magistrate; and it so happens that a magistrate is as useful to a ward leader as a highly trained English setter to a bird hunter. Each is invaluable in helping his owner round up his quarry, whether voters or quail. It is also true that the "judge" or the dog may be hard on the people or the quail, but that has very little to do with institutions of this sort. Magistrates are maintained in Philadelphia because they are useful to politicians—as bird dogs are to sportsmen.

Governor Pinchot was an honorable man. He also understood politics in the Keystone State, and he was ambitious. He appointed a ward politician to the magistracy not because he loved Philadelphia less, but because he loved the Senate more. As already said, one must have a plurality of votes in order to be elected to the United States Senate; the problem is how to capture such a plurality. If a ward leader "owns" some thousands of them, and if he will trade or exchange them for a commodity known as a magistracy appointment, the realistic candidate may make the appointment. Governor Pinchot did so.

What his appointee would do, one could not precisely, and in detail, know at the time, for all ward politicians are not the same. They are individuals of endless variety so far as everything but their central function is concerned. But their function—personal service to voters—is common to all that survive, whether the individual be male or female, Catholic, Jew, or Methodist, educated or illiterate. Service of a personal sort is the thing that enables them to hold the favor of their people day after day and year after year. To understand the life and works of one of these foot-soldiers in politics is to understand the essential facts about all of them. Of course, it is to be realized that the precise nature of these services, as well as the insistence or absence of the demand for them, is based squarely on the quality of the constituents represented, but one can obtain a pretty good idea of the way Governor Pinchot's new appointee would act by briefly reviewing the life of his predecessor. I shall call this predecessor Magistrate Stubbs; the name is fictitious, but all else is true. I knew the late magistrate rather well, and all of the materials in this obituary are taken from the life.

Both in politics and law, Judge Stubbs was a unique figure. He lacked the judicial dignity of the majority of members of Philadelphia's minor judiciary, and the truthfulness of the average ward leader; yet he exceeded them all in patience.

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One evening, I called at his home. A Negro came to the door and told me that the judge was talking at the telephone. I sat down in a small, plainly furnished room that contained a five-foot shelf, well filled with law-books and popular fiction. Very lively jazz music was coming in over the radio when I entered. The short, pudgy, weasel-eyed judge, who was in shirt-sleeves, motioned to the Negro to silence the radio while he talked over the telephone. I sat down and waited. When he had finished he turned, without speaking, and went into the next room, a kitchen, where he began eating. The telephone rang again, and he answered it, chewing food as he walked back and forth. Again he returned to the kitchen to eat. A few minutes later a division leader came in, to explain a case that would come up on the morrow. When he had gone, another came. This man, Joe by name, had been a party committeeman for thirty-six years. He was thick-set and chunky, and unlike the judge, he did not look soft. The judge went on eating.

Joe asked: "Didn't you get him out?" "Yes, I had hard work doing it too," replied the judge. "Hinkle [the district attorney] did it as a personal favor." Joe shouted: "No one has any right to any favor except through the division leader"—meaning himself. "And another thing, judge, that G—— d—— loafer that was beaten shouldn't be allowed to come to our meeting. He can't do you any good. Why in hell do you owe him anything? He was guilty, wasn't he?" "Well," said the judge, "you can't always tell about the future."

Then Joe seemed suddenly to think about something else; he began again quite abruptly. "Damn you, judge, you shouldn't be selling tickets to the boys." Again and again Joe verbally flayed this magistrate, his ward leader, with "fightin' words," yet the magistrate took little notice of what was said. He was finishing his supper, standing. From time to time he would interrupt, to protest feebly, "Ain't we friends, Joe?" Then he sought to explain why he should be selling tickets. "When you fellows fought against me" [that is, tried to unhorse him as leader of the ward] "it cost me a lot of money. I got to get that back. I wouldn't take anything that wasn't right." Joe interrupted: "That ticket racket ain't right, judge!" The magistrate continued: "When I can put money in my pocket and I need the money, that is right."

Another telephone call came. The Negro answered and beckoned to the judge. The latter stood ten feet from the phone without making any effort to answer it. Two minutes later, the colored man signalled him again, and the magistrate picked up the receiver. When he had finished talking, he seemed to recognize me for the first time. He smiled and said, "Oh, you are a friend of Hunter." (Hunter was a political supporter of his who had introduced us.) "Well, I guess you are learning what you want to know." I said that I was learning much. He replied that he had

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had about sixty calls that night. "I am glad that you are here to see how things really go. It is better than having me tell about it. You come back Monday night and just sit down and listen."

Joe then volunteered the information that the judge was a generous fellow. His mother had once told Joe that although the judge had brothers, "he was a mother's boy." When he was little, he used to take a basket on Christmas eve and fill it with presents for all the other members of the family. "He was happy giving presents."

I returned Monday night, but the judge was not at home. I remembered what his workers had said about the value of his promises; partly because of his strenuous life, and partly because of his attitude toward truth, his word was never certain. In this he differed from W. S. Vare, but not from former Mayor K. I sat on his porch for an hour that evening, talking to a member of his family. During that time nine people called, hoping to see the judge—seven men and two women. Twice the telephone bell rang.

I thought of the mother's-boy story when I accompanied him and three of his committeemen one time, on December 24, on an expedition along Dock Street. The judge, being a good ward leader, remembered his people on Christmas day. He and his ward committeemen and other office-holders contributed part of the costs, and the balance was made up in other ways. This time, the produce merchants along Dock Street did their part. One of the most prominent had a personal reason for coöperating. He asked one of his best-known salesmen to visit the produce men with the magistrate—and to ask them for fruit and vegetables for the kiddies of the xyz ward. This original produce man demonstrated the idea by himself donating a box of apples, which was promptly put on the magistrate's truck.

Dock Street is lined with open-air produce markets. The salesman took us to the first neighbor merchant and, having introduced us to the judge, explained his mission. This man gave a bushel of carrots. The judge courteously thanked him and said that he would remember him. We then went to the next dealer, and so on, along the line. The salesman would always introduce the judge and tell the story. The judge would shake hands and say that he would certainly appreciate any gifts for the kiddies of the xyz ward. Sometimes the salesman would say: "Don't forget this man, judge, when he comes up before you." The magistrate would smile and say he wouldn't. One produce merchant said: "I am shaking all the magistrates' hands; maybe I'll need them sometime." This would often draw a laugh all around. Another merchant refused to give anything. "I have already given fifteen crates of vegetables to the Salvation Army, and I think I've done my share." The judge didn't argue with him; he said, "Very well," and turned to the next one. In

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another instance, the merchant smiled: "I ought to know the judge; I have been up before him a couple of times. I'll give him anything that he can use—a box of apples or oranges." The next merchant was violent in his disgust with magistrates. He said: "Magistrate T was around yesterday asking for something. My own relative, ex-Magistrate Z would kowtow to me before Christmas; but when I went to his office after Christmas, he wouldn't do a thing for me. So, I think, judge, a magistrate is pretty rotten. I'll tell it to you plain." The leader said: "There's a lot of truth in that, but all magistrates aren't that way." Another merchant grinned and said: "I have met the judge." Another one too had evidently seen him, for the magistrate said, "Didn't I treat you nice in court this morning—did just what you said?" A comment of another was: "Well, I have met this gentleman before," as he shook hands with the magistrate. One of the merchants said as the leader departed: "Be good." The judge smilingly corrected him—"What you mean is, be good and careful." The next one gave a box of oranges and added: "Don't forget I may come to see you sometime."

Finally, all of the merchants in the vicinity had been visited and the truck was full. Only six had refused. Forty-four had given boxes or sacks of apples, oranges, bananas, carrots, turnips, cabbages, and potatoes. One dealer had some Christmas trees that he said the magistrate might have. The judge's men piled them high on the truck.

The next morning, about three hundred families were represented at the ward club, and each one was given a Christmas basket—something that made the spirit of Christmas vivid in small, mean, crowded homes where cupboards were too often bare. Usually the basket was handed to the recipient by some familiar figure—there was no guessing the identity of the actual Santa Claus in this giving! There he stood with a friendly smile—the Republican party, dramatized by the ward committeemen, party workers, and the judge.

"Mother's boy" always liked to be in crowds—to have people around him; he helped out around polling places when he was a youngster. At twenty-one, he was appointed a registrar in his division, and he did so much toward winning the division for his friends at the next two elections that his capacity for leadership was recognized. He was elected to his ward committee; and then eight years later (he by that time, like so many of the present city committeemen, had attached himself to a stronger politician) he became a synthetic ward leader and a member of the Republican city committee. Before this he had learned a trade on the side, and had been elected, first to the city council, and then to the magistracy. His political career had been turbulent; his life was no bed of roses, but thanks to his great benefactor, and to his own everlastingly sticking to the details of ward politics, giving his jobs and favors where

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they would count the most, and ruthlessly excluding from his committee those that opposed him, he remained leader (but only in name) through the devastating days of 1933.

When he addressed the party committeemen at the club, he appeared, in spite of his bulk, to be weak. His voice was not strong; and yet, although one could by no means hear a pin drop when he spoke, the party workers could gather what he wanted to put before them. Then when the meeting was adjourned a cluster of men would settle around him, and in the give and take of personal conference he would put flesh and blood on his ideas. The men accorded him little reverence, but they listened to him because they had to, for he was their leader. They would be wanting favors later on.

He was tolerant—although the exigencies of politics (before repeal) usually required him to support dry candidates at the polls. He was bigger than his party when beer was involved; he had a bar at the ward club, and there he combined business with pleasure. He drank the good brew with his party committeemen, and they reminded him of his promise of a job. He promised again, but there were always more promises than jobs. As one of his most intelligent division leaders observed: "The judge is, as ever, pursuing his old tactics of wearing down the job-hunters by telling them to come to meet him at the county commissioner's office day after day, week after week, and month after month until they get tired of coming and drop out, whereupon new and uninitiated candidates take their places, and the vicious circle continues."

At police station hearings, he spoke in a low voice, and some of the party committeemen who came there spoke in a still lower one. He was button-holed between the curb and his desk, a card was shoved before him, a word whispered, and the judge went in. "Hats off"—names were called, persons appeared before him, decisions were given. One morning when I observed the judge in action at a police station, a prominent political criminal lawyer came in just before a rather important case was being considered. This attorney merely leaned against the rail directly in front of the magistrate and fixed him with his eye. The judge's decision brought forth a protest, but not from the influential politician leaning against the rail. On another occasion, I noticed a council member who belonged to one of the stronger leaders stand behind the magistrate to tell him how to decide a case. So far as the judge was concerned, this man was the personal representative of the sovereign, and the judge could no more safely ignore him than could a minion of Louis XIV ignore an emissary of the king.

The action of the ex-Governor in appointing ward politicians to the minor judiciary, and the life and work of the late Magistrate Stubbs, can best be understood when considered in relation to each other and to the

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sovereign electorates whose attention they sought to capture. One of the first rules in a living grammar of politics is that everyone in politics is influenced by everyone else in politics; and furthermore, the tenor of a politician's actions over a period of years is a direct expression of the basic attitude of his constituents. Otherwise, a leader could not survive in a political system based on popular suffrage. The limit of attention is the limit of democracy. If a governor who wants to continue in public office thinks that he will win more votes than he will lose through appointing a ward-heeler to the magistracy, he will make the appointment. If a "judge-ward leader" finds that his most certain public support is fashioned out of presents to the "kiddies" of his ward at Christmas time and favored decisions for the accused the year round, he will act in accordance with his findings. The fact that Stubbs was serving his twenty-first year as magistrate when he died suggests that his view of human nature in politics was a realistic one.[2]

The central problem, then, for those public-spirited individuals who deplored the action of Governor Pinchot in giving a ward leader a judicial office as though he were a king dealing with a feudal lord is to educate the electorate. If the voters are serfs, nothing that the newspapers publish can save them from being imposed upon. The history of man is conclusive evidence on this point. But if the voters are sufficiently informed and sufficiently awake politically to know what is what in politics, there will be no incentive for dishonest public actions. Neither a governor nor a magistrate will think of committing an act against the people if the people are likely to recognize it as such. The problem is to dramatize the issues in public life so effectively that a controlling number of voters will see that it is to *their* interest to support public officials who serve the common, and not a private, good, and to help the generality of voters to identify officials of this sort. And this incontestably is the unfulfilled task of Democracy.

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[2] For a more detailed discussion of this idea, see my *Boss Rule; Portraits in City Politics*, to be published by Whittlesey House in April.

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The New Amateur in Public Administration. The history of public administration in the United States is a record of compromise between conflicting principles.[1] The oldest and most bitterly-contested of the many clashes between antagonistic points of view is that between the principle of the spoils system on the one hand and the merit principle on the other. Stripped of eulogistic verbiage, these principles present two diametrically opposed objectives—the former that administration shall be the happy hunting ground of the spoilsman, the latter that administration shall be a non-political service where "efficiency is king." For a century at least, with the possible exception of the early days of the national administration, the advocates of the spoils system held a dominant position in the struggle, compromising only where a tradition of service protected a public office from partisan control. By 1870, however, the movement for civil service reform had gained strength and the following three or four decades witnessed a determined drive for the adoption of the merit system.[2] The reaction to the spoils system principle, once begun, has continued ever since. Today, administration, by virtue of its sweeping powers over individual liberty and property, has come into closer contact with the citizen than ever before, and this fact is serving to accelerate the movement in favor of the merit principle in the public service.

This major conflict, long occupying the spotlight of attention from practitioners and students alike, has thus far tended to obscure the im-

[1] The orderly reconciliation of antagonistic interests is, indeed, the fundamental problem of democratic government, as James Madison convincingly demonstrated in his essay upon the causes and methods of control of factions in a democracy. After indicating some of the conflicting interests which arise from an unequal distribution of property in a society, he asserts that "the regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government." *The Federalist* (Lodge ed.), p. 54. The basic antagonism and necessity for compromise between private and public rights is illustrated admirably in the recent Minnesota moratorium case. Speaking for the majority of the court, Chief Justice Hughes writes: "It is manifest . . . that there has been a growing appreciation of public needs and of the necessity for finding ground for rational compromise between individual rights and public welfare." 290 U. S. 398, at 442 (1934). Professor E. S. Corwin's *The Twilight of the Supreme Court* (New Haven, 1934), is a stimulating record of the effects of the constant clash between antagonistic principles upon the development of American constitutional law.

[2] Dr. Leonard D. White attributes the early efforts to introduce the merit system more to "a desire to protect the foundations of American democracy" than to the desire to secure a more efficient service. See *Trends in Public Administration* (1933), p. 10. The disastrous effects of the spoils system undoubtedly impelled early emphasis on the need for the elimination of this evil, although the ultimate aim would seem to have been higher efficiency in administration.

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portance of certain other problems of administrative practice. Especially significant among the latter have been two concerning the position of the department head in administration: first, the proper relationship of the department head to the chief executive; second, the qualifications essential to the efficient execution of the function of department leadership. Attention is here directed to the conflicts of ideas and the resultant compromises in practice which these questions have impelled, and special emphasis is placed upon the growing need for a new type of department executive in modern administration.

For many years, the question of the proper relationship of the department head to the chief executive has aroused controversy between those who would place the administrative department in the hands of a representative of the chief executive and those who demand a department head independent of the chief executive. The former advocate the one-man control plan under which the department head is directly responsible to the chief executive by virtue of the executive's power of appointment and removal. The latter favor the board control plan under which the department head is chosen by, holds office at the pleasure of, and is directly responsible to, a lay board. The members of the board are appointed by the chief executive, but are made comparatively independent of his control by provisions for overlapping terms of office or for terms longer than that of the chief executive, or both.[3]

Many arguments have been advanced by both sides to this dispute, the more important of which may be summarized briefly. The proponents of one-man control, maintaining that economy and efficiency are the primary objectives in administration, urge the centralization of administrative responsibility in the chief executive. To achieve this end, it is believed that the chief executive must have direct control of the work of the various administrative departments by means of the powers of appointment and removal of his chief administrators. Adequate executive responsibility for administration is held to be unattainable if the departments and their heads are controlled by boards independent of the executive. The advocates of board control, on the other hand, argue that their plan protects the department head and the department from the political manipulations of the chief executive, insures continuity of administrative planning and policy, and elicits the participation in the administrative process of public-spirited private citizens through whom

[3] The board-control plan has no reference to the paid board of administrators. This type of agency, whether partisan or bi-partisan, violates a dogma of good administrative practice in that it combines responsibility for quasi-legislative, quasi-judicial, and administrative functions in one body. For a discussion of this principle and the evils arising from its violation, see W. F. Willoughby, *Principles of Public Administration* (1927), pp. 119–139.

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the community's demands upon the administrative services can be made continuously effective.

These arguments, stoutly maintained, have also been vigorously attacked. The one-man control plan is objected to because it permits a succession of politically-minded appointees to head administrative departments and to subject the activities of administration to partisan politics. At the same time, the assertions of the proponents of board control are ridiculed by reminders that a board may not prevent political interference, that in some cases a board offers great opportunity for the spoils system to flourish under the guise of non-partisanship or bi-partisanship, and that continuity of policy under a long-term board may become continuity of inertia.[4]

It may readily be seen that these two groups are in fundamental disagreement. Those who would place a board over the department head actually are endeavoring to erect a protective screen between that office and the chief executive which the latter cannot penetrate. Basically, their proposal looks toward a non-partisan, non-political administration, the problems arising therein to be approached as technical rather than political concerns. If applied uniformly to all agencies of administration, the plan inevitably tends to confine the activities of the chief executive to influencing the legislature in broad questions of governmental policy and to certain formal duties attached to his office, such as speech-making and welcoming distinguished guests, and greatly reduces the importance of his position in administration. In direct contrast, those who would place department heads completely under the control of the chief executive seek to elevate that official to a position of preëminent power and importance in administration.[5]

The concentration of administrative responsibility in the chief executive means that administration is to be subjected to political control and direction. The chief executive in American government, the city manager excepted, is essentially a political agent, a politician. He represents the combined opinion of his constituents as expressed through political means. His election is a political act, and his duty is to execute the

[4] A spirited attack upon the board-control plan in welfare administration is C. E. McCombs, "State Welfare Administration and Consolidated Government," *National Municipal Review*, Vol. 13, pp. 461–473. Professor F. W. Coker has made an excellent defense of the use of lay boards in administration in his "Dogmas of Administrative Reform," *American Political Science Review*, Vol. 15, pp. 399–412.

[5] Many illustrations of the demand for increased executive responsibility are to be found in recent surveys of state administrative organization. See, for example, *State Administrative Consolidation in Maine* (1930), p. 24; *Report on a Survey of Organization and Administration of the State Government of New Jersey* (1930), pp. 7–11; *Report on a Survey of Administration and Expenditures of the State Government of New Jersey* (1932), pp. 30–31.

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political mandates of the electorate. The one-man control plan for administrative structure looks toward political control of administration; the board control plan is an attempt to secure non-partisan, non-political control of administration.[6]

The repercussions of this controversy have resulted in a great variety of compromise measures in administrative structure. In some jurisdictions, a board is placed at the head of certain departments, such as education, health, and welfare, where continuity of administrative policy and long-term planning seem especially desirable, while other departments are directed by a single head appointed by and directly responsible to the chief executive. Considerable variation exists in the size, terms of office, and functions of the various lay boards at the head of departments. The chief executive may be a member, *ex-officio*, in which case there is opportunity for him to become an important factor in the framing of policies for the direction of board-controlled departments. In some jurisdictions—the state administration in Massachusetts, for example—the heads of departments, although appointed by the governor (with approval of the executive council), may enjoy a limited degree of independence from executive control by virtue of terms longer than that of the chief executive.[7]

The recent movement for administrative consolidation and centralization of administrative responsibility in the chief executive has led some state and local governments to eliminate almost entirely, or to minimize, the importance of department-controlling boards in their administrative structure. It is by no means certain, however, that the movement will become sufficiently powerful to eliminate these agencies from administrative practice. There are, in fact, indications that the principle of board control is maintaining a healthy vigor despite the onslaughts of the administrative reformers. Examples of this may be drawn from a few of the late reports on surveys of state administrative systems: (1) the Missis-

[6] The recent growth of executive responsibility in administration has raised doubts as to the advisability of placing so much power in a political agent. "The last two decades, and principally the last ten years, have witnessed a profound modification of the American administrative system. We are now faced with the question whether American chief executives are to be primarily political or administrative officials." White, *Trends in Public Administration*, p. 233.

[7] A detailed treatment of the controversy over the one-man and board-control principles of organization and a comparison of the results of their application in several state welfare departments may be found in the writer's *State Welfare Administration in New Jersey* (1934), Chap. II. The freedom from executive control of a department head who is under the direction of a board may be restricted severely by placing the control of financial procedure in the hands of the chief executive. In many instances, this has been done by creating staff agencies under the sole direction of the chief executive, with extensive powers over budgeting, purchasing, and accounting.

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sippi survey recommended the board-control plan for the department of public welfare; (2) the Iowa survey recommended the continuance of a board of control in the department of public welfare; (3) the Ohio Joint Committee on Economy in the Public Service recommended the substitution of board control for one-man control in the departments of health and industrial relations, and urged that considerations be given to a similar change in the department of public welfare; (4) the Legislative Fact-finding Committee in California recommended the abolition of the single-headed department of social welfare and the transfer of its functions to the control of a welfare board.[8] It is not unreasonable to predict, therefore, that the practical solution to this controversy over the type of directing agency lies in an administrative structure in which the principles of one-man and of board control both play a part.[9]

This solution may seem highly illogical to those administrative reformers who would plan on paper an administrative hierarchy in which all lines of responsibility, clearly marked, run from the lowest subordinate to the chief executive—a perfect union of authority and responsibility. But in American practice, unfortunately perhaps, a logical symmetry in organization is as fanciful as an Utopian dream. Our public agencies, being representative institutions, are necessarily composites or cross-sections of the various group interests within the society governed. Divergent interests give rise to antagonistic principles, and in the ensuing clash of principles workable compromises must be evolved. There is no more fertile ground for the art of compromise than in the field of American administrative organization.[10]

The second general problem concerning the position of the department head in administration is that of the type of administrator required, and is one of much broader significance than the organizational problem aris-

[8] *Report on a Survey of the Organization and Administration of State and County Government in Mississippi* (1932), p. 562; *Report on a Survey of Administration in Iowa* (1933), pp. 238–239; *Report of Ohio Joint Committee on Economy in the Public Service* (1929), pp. 8, 11–12, 142; *Final Report of Fact-finding Committee to the Senate, California Legislature* (1933), pp. 11–13.

[9] As Professor Coker says, "there is a vast amount of useful coördination that can be accomplished in our state administrative systems without making too much of a fetish out of the principle of one-man responsibility and control." *Loc. cit.*, p. 411.

[10] The participation of representatives of employer and employee groups in the administration of state labor law is in point. In the administrative process, these groups must be represented and compromises between their conflicting demands devised. For example, the industrial commission in the Illinois state department of labor, with functions of arbitration and conciliation, is composed of five members, two representing the employer group and two the employee group. The fifth number is not identified with either the employing or employee classes. *Illinois Civil Administrative Code of 1917, as in Force July 1, 1933* (compiled by Edward J. Hughes).

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ing out of the demand for protection of that official from partisan political influence. Mindful of this more significant aspect of department leadership, the proponents of board control also have argued that a relatively long tenure of office, which their plan encourages, is essential if the department executive is to become a competent administrator. They have pointed to the disastrous consequences to administrative planning and efficiency which result from frequent turn-overs among department heads in administrations operating under the single-headed department plan. It is asserted that a two-, three-, or four-year term, coinciding with that of the chief executive, is so short that the department head is unable to become sufficiently acquainted with the activities of his department, or that soon after he does become competent to direct these activities his tenure is terminated by the inauguration of a new chief executive.[11]

While the strength of this contention may be admitted, it must be recognized that a comparatively long tenure for the department head does not alone guarantee competent leadership. Attempts to surround this position with the protective device of a lay board are valueless without intelligently planned efforts to secure an administrator capable of directing and coördinating the work of his department. In fact, protected tenure is notoriously undesirable where accompanied by a poor choice of administrator. Furthermore, since single-headed departments are to be found in every administrative system, to an increasing degree in many, a practical approach to the problem of securing qualified department heads must take into account the patent fact that many department heads in American administration will have a short tenure, will be responsible to the chief executive, and will retire when that official is replaced by a new incumbent. Whether, then, the tenure of the department head is limited or protected, whether the position is filled by a lay board or by the chief executive, the competence of the incumbent to lead and direct his department presents a problem of vital significance to successful administration.

The importance of this problem is enhanced by the trend toward professionalism in the public service. For some time, the need for the permanent expert in administration has been reflected in the movements for a shortened ballot and for civil service reform. While heretofore progress along these lines has been slow because faced by solidly entrenched spoils

[11] Citations in support of this view may be found in the writer's *State Welfare Administration in New Jersey*, Chap. II. This study indicated that under the board-control plan New Jersey has been highly successful in excluding partisan politics from the administration of a progressive welfare program by qualified executives. The experience in certain states employing the one-man control plan (Illinois, Ohio, Pennsylvania, New York) lead to the conclusion that one-man control, while perhaps strengthening gubernatorial responsibility, affects adversely the quality of the directing personnel. *Ibid.*, p. 46.

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systems, constitutional barriers, and political prejudices, and because reformers have not always agreed upon the methods to be employed, current conditions are developing an even wider recognition of the need, and stimulating a greater demand for a professionalized administration.

The revolutionary character of recent economic and social tendencies has affected public administration generally in two important ways. In the first place, modern science and technology have placed new tools in the hands of the administrator. An increasingly large number of administrative problems may now be met by the application of scientific knowledge, technique, and apparatus. The *modus operandi* of administration, in other words, is becoming that of the technician. Secondly, the fundamental character of administration is changing from that of policing, of law enforcement *per se*, to one of service.

The significance of the latter can hardly be over-emphasized. On every hand, government is being forced to assume a wide variety of service functions because of the increasing helplessness of the individual in a bewilderingly complex mechanical age. If the economic and social structure of the group is to be preserved, no longer can the individual be left alone to fend for himself, appealing for public aid only in the last resort and then under public stigma.[12] Incontrovertible evidence from all sides attests that individual effort is alone unable to secure and maintain a decent standard of living for all, and that collective measures must be undertaken on a wide scale. The budget of any municipality, or state, or of the national government, is ample proof of the magnitude of the problem of service to the under-privileged and of its overshadowing importance in all units of administration. That this striking change in the character of administration is but temporary, no one can believe in view of the many proposals for new legislation designed to expand further the scope of the service function as a permanent feature of administration. "To give rather than to withhold" is the keynote of modern governmental action.[13]

The efficient execution of the service function demands the trained expert, because the problems involved are largely technical in character. Education, social welfare, health, highways, public works, housing—the list could be expanded almost indefinitely—involve duties which can be performed adequately only by trained personnel. A properly staffed health department, for example, must employ trained public health

[12] The principle of "less eligibility," once the root principle of English and American poor-law systems.

[13] "The functions of government have changed from being mainly negative into being mainly positive, that is to say, governments have come to be engaged not merely in preventing wrong things from being done, but in bringing it about that the right things shall be done." Graham Wallas, "Government," *Journal of Public Administration*, Vol. 6, p. 3.

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nurses, sanitary engineers, bacteriologists, statisticians, field inspectors for the enforcement of sanitary codes, supervisors of tuberculosis, child hygiene, and venereal disease clinics, and experts in public health education. A welfare department numbers among its staff trained social service workers, psychologists, psychiatrists, penologists, and statisticians. Institutional administration requires the services of large numbers of doctors, surgeons, dentists, dietitians, trained nurses, and a staff of technical experts to direct the training of inmates in the institutional industries. Countless examples might be added to show the vital importance of the trained expert in modern administration.

To attract the expert to the public service, he must be given permanent tenure. This is fundamental. It is impossible to foster and develop a technically trained personnel unless the positions be made secure from political manipulation, unless a high degree of permanency be guaranteed.[14] If this be done, the development of American administration into a professionalized service manned by permanent employees becomes inevitable.

The growth of professionalism in the public service greatly increases the difficulty in maintaining the proper balance between popular control and expert execution of administrative functions. On the one hand, effective safeguards must be erected against the growth of an independent bureaucracy, "a new despotism" which would destroy the foundations of democratic government. On the other hand, the professional standards of the public service must be protected from the demoralizing influence of political opinion which by its very nature and means of expression is inadequate to comprehend fully the problems involved in the administrative process. This is the dilemma which has long bedevilled all democratic countries and which, in view of administration's "coming of age," is now more acute than ever before. Sincere critics, as well as political demagogues, are raising the warning cry that representative government may be doomed to death "by the slow strangulation of an engirdling democracy."[15] Concurrently, the demand for a professionalized service grows in power and insistence.[16]

In the approach to this dilemma and in the efforts to find a working

[14] Adequate plans for examination, classification, discipline, promotion, compensation, and retirement allowance are, of course, essential elements of a good merit system.

[15] John W. Davis in an address before the Institute of Public Affairs of the University of Virginia, July 10, 1934.

[16] "If there is one thing, more than any other, which all government now requires in this highly complicated and interrelated (*sic*) world, it is the much abused and much distrusted expert. The day of haphazard government is over. 'Brain Trusts' may go out of fashion, but not the need for brains." Homer Cummings, *Liberty Under Law and Administration* (1934), p. 124.

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solution, the department head occupies a strategic position. This official may be the medium through which popular control and professionalized administration may be reconciled in American practice. Through him, a "democracy serum" may be injected into the administrative structure, immunizing it against the germs of bureaucracy, and, at the same time, competent direction of permanent experts may be provided. He is the temporary, non-professional administrator, as distinguished from the permanent, professional administrative officials. Placed at the head of a staff of permanent employees, this official must serve in a dual capacity; first, he must represent the public or non-professional interests in administration; second, he must direct and coördinate the activities of his permanent staff. He is the so-called "amateur administrator."[17]

This concept of the nature and function of the department head in modern administration, which is essentially a compromise between political and bureaucratic interests, theoretically has much merit, but its application to administrative practice has raised a serious difficulty. What are the qualifications of the amateur administrator? The generalizations that he represent the people, that he have a broad view of the problem of government, and that his approach to administrative problems be fundamentally non-professional are too vague to be of much value to the political authority which selects him. Such uncertainty opens the way for abuse of the principle of amateur-professional differentiation. It permits the entrance into administration of "amateurs" who in reality are either professional politicians eager to seize the resultant opportunity to subordinate their departments to their own selfish interests, or figureheads through which professional politicians attain similar ends. At the same time, this uncertainty permits the selection of uninterested, incompetent laymen who may become entirely subservient to the bureaucratic interests of their professional staffs. Thus the attempt to create a working equilibrium between political and professional tendencies is thwarted either by the enhanced power of the professional politician or by the domination of the professional administrator.

These conditions arise from the failure to emphasize sufficiently one aspect of the dual nature of the amateur administrator, that is, his posi-

[17] L. D. White, *Public Administration* (1933 ed.), pp. 63–66. This writer says of the dilemma: "With the constant evolution of special technique and the increasing complexity of organization and function, how can a working connection be maintained between the official and the public? . . . It was the real merit of the decentralized and self-governmental form of administration now gradually being replaced that it remained in close touch with the people. To maintain popular confidence in a vast bureaucracy far removed from popular control and increasingly required to interfere in the personal life of the individual is a far more difficult, and also more important, problem." *Ibid.*, p. 476.

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tion as director and coördinator of departmental activities. As the number and proportion of experts in the public service increase and, under the pressure of new economic and social conditions, the trend toward a technical and professionalized administration continues, the rôle of the amateur administrator as manager of his department becomes more important in the administrative process. It is highly imperative, therefore, that management in administration, particularly department management, be generally recognized as a distinct function the execution of which demands men of special training.[18]

What, then, are the essential qualifications for positions of department management in our modern administrative systems? With full allowance for the variations from general rules necessitated by the size of the department concerned as well as the nature and scope of its work, three general categories of qualifications may be suggested. First, the amateur administrator must possess the innate qualities of leadership. He must be able to inspire the respect and confidence of subordinates; he must possess a natural interest in and affection for people; he must have sufficient imagination to visualize the significance of problems as they arise; he must be able to make quick decisions where speedy action is vital; and, perhaps most important, he must have the quality of adaptability. Previous experience in a managerial position where these qualities have been developed would seem absolutely essential. Second, the amateur administrator must possess intellectual competence. His mind must be disciplined and able to stand the mental stress and strain incurred in department management. Formal education seems to offer the best training ground for early mental discipline, and this should include study in the social sciences in order to provide a broad knowledge of the general functions and problems of government. Third, the amateur administrator must possess technical training derived from practical experience in the administration of one or more of the functions with which his department is concerned.

Particular emphasis should be placed upon technical training. It is illogical to expect efficient leadership of a professionalized service from a man entirely ignorant of the technical problems involved. How, for example, can the head of a public health department who has no knowledge of health administration furnish competent direction to the work of trained nurses, sanitary engineers, bacteriologists, clinicians, doctors, and statisticians? How is it possible for a public welfare administrator

[18] The office of city-manager has been created for the purpose of eliminating entirely political considerations in municipal administration. It substitutes professional management in place of political management. An encouraging sign is the progress which has been made in the development of professional standards for city-managers. See Clarence E. Ridley and Orin F. Nolting, *The City-Manager Profession* (1934), Chaps. III, IV.

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without previous experience in welfare work to be an able director of trained social service workers, psychologists, psychiatrists, penologists, and research workers? The same question might be asked with reference to any sizable administrative department equipped with a trained, permanent staff capable of providing modern standards of administration, with the answer clear in every case—the professional qualification is the necessary adjunct to the administrative qualifications of the modern department head.[19]

Granting that technical training should be a qualification for the office of amateur administrator, certain questions arise. What kind of technical training is needed? What amount of training is necessary? The skeptic may argue that since these cannot be answered definitely, the qualification means nothing. This, however, is not true. These questions involve problems of application that cannot be solved by any arbitrary, fixed standards of the kind and length of training required. There must be variations according to the size and nature of the work of the department concerned. The essential thing is that *some* training has been secured. It makes no great difference whether the amateur head of the public welfare department has had his experience in social case work, community mental hygiene projects, care of defectives, or care of delinquents, but it is essential that he has had experience in welfare work. Whether he spent two years or five is not nearly so important as that he spent *some* time in such work. There are, it is true, minimum and maximum limits to the length of service needed. These limits should be governed by two principles: first, the technical training must have been long enough to give the amateur departmental head practical experience in the execution of at least one of the department's functions; second, the technical experience must not have been so long that his capacity for envisaging the various problems within the department as component parts of the entire departmental program has been destroyed by prolonged specialization.[20]

[19] See J. R. Howard Roberts' article for a similar idea with reference to local administration in England, "The Professional Expert and Administrative Control," *Journal of Public Administration*, Vol. 7, pp. 247–251. This principle seems hardly less important with respect to the service functions than the other functions of administration, including the "house-keeping" or staff functions, police, taxation, regulation of public utilities, etc., the execution of which is rapidly becoming technical and specialized in character.

[20] "As a general rule, the specialist is rightly so enthusiastic about his own particular work that he is in danger of lacking that sense of proportion and that recognition of political, financial, and practical limitations which every administrator must learn to possess." "The first essential quality of the good administrator is adaptability. . . . Adaptability is not a distinguishing feature of the specialist." Sir Francis L. C. Floud, "The Sphere of the Specialist in Public Administration," *Jour. of Public Admin.*, Vol. 1, pp. 121, 124–125. Recognition of the two principles

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The development of more exacting qualifications for the recruitment of department heads must be accompanied by opportunities for additional training after entrance into the public service. Preliminary training alone is not enough. Administration is not static; it is ceaselessly changing. These executives must keep abreast of the current expansion, development, and improvement throughout the country of techniques of administration. There are two ways in which this can be done: first, by general conferences of the heads of all departments in each field of administration where opportunity will be had for the discussion of common problems and the mutual exchange of ideas; second, by formal education at schools and colleges offering special courses and seminars in selected problems of public administration. Considerable progress along these lines has already been made.

For the improvement of standards of public administration, the following conferences or associations, including in some instances private as well as public officials, are among the more important: (1) Agriculture—National Association of Commissioners, Secretaries, and Departments of Agriculture; Association of Dairy, Food, and Drug Officials of the United States. (2) Banking—National Association of Supervisors of State Banking; National Association of Securities Commissioners. (3) Education—National Council of State Superintendents and Commissioners of Education. (4) Health—American Public Health Association; Conference of State and Provincial Health Authorities of North America; Conference of State and Territorial Health Officers (called by surgeon-general of the United States under authority of act of Congress). (5) Highways—American Association of State Highway Officials; National Conference on Street and Highway Safety. (6) Insurance—National Convention of Insurance Commissioners. (7) Labor—Association of Government Officials in Industry. (8) Finance—National Tax Association; National Association of State Auditors, Comptrollers, and Treasurers. (9) Welfare—American Public Welfare Association; National Conference of Social Work.[21]

In addition, some schools and colleges are now providing special courses in public administration especially designed for public officials.

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suggested would provide a greater incentive to the permanent employees, since appointment of the most promising to positions of department leadership would not be uncommon, and would at the same time attract from outside the service a higher grade of employee. Although the tenure of the departmental head would be limited where the chief executive possesses unlimited power of removal, it is not entirely improbable that a profession of department director would evolve, somewhat as has the city-manager profession.

[21] For an extended treatment of the origin, growth, and aims of these organizations, see W. Brooke Graves, *Uniform State Action; A Possible Substitute for Centralization* (1934).

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Particularly significant has been the establishment by the International City Managers Association of a series of extension courses in municipal management open to those outside as well as inside the public service. In the courses, which include study of municipal finance, planning, zoning, utilities, police, fire, law, health, welfare, public works, and personnel administration, the supervisory aspect of administration is emphasized. The purpose is not to prepare one as an expert in any field, but rather to furnish a broad knowledge of the major problems and practices of municipal administration.[22]

In conclusion, a more general recognition of department management in administration as a specialized function, a clarification of the qualifications essential to its efficient execution, and an insistence upon the selection of a department head who as a result of previous experience possesses a practical knowledge of the duties entrusted to his department, will erect barriers to the entrance of both the professional politician and the incompetent layman to positions of department leadership. The introduction into the public service of a new type of amateur will be encouraged, and the opportunity will be made greater for the future development of higher standards of department management. The new amateur, involving a further refinement of the traditional compromise between political control and professionalized execution, will be instrumental in molding and adapting modern administration to meet the pressing need for the extension and improvement of its services.

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Coördination of National Administration. With the rapid expansion of the services of the United States government, especially since the inception of the New Deal, one of the greatest problems in the maintenance of efficient administration is the coördination of the multitude of governmental activities. Some may object to better coördination and increased efficiency because of the fear of reducing the number of employees and increasing unemployment. This fear is unfounded. The object of coördination is greater efficiency. This might result either in decreased employment and expenditure or in more effectively accomplishing the objects of government, and in the performance of more or better services than would otherwise be possible. In the latter case, coordination might result in increased employment. If the government is to accomplish the purposes of the New Deal, all its establishments must work in harmony. No greater need for coördination has existed than during this depression.

[22] *Public Management*, Vol. 15, pp. 13–15.

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The reorganization of the national administration so as to group all related activities in the same department will go far toward coördinating the administration. The need for this is apparent to students of public administration; but many varied and conflicting plans have been presented. Some say that in order to coördinate the engineering activities, all agencies performing such work should be placed in one department. Others argue that most of these activities require coördination with the military activities and should remain in the War Department. Some say that all activities of the government in foreign countries should be placed in the Department of State. Others say that the promotion of American commerce in foreign countries should be coördinated with the other commercial services of the government and should remain in the Department of Commerce. Similar problems arise when we try to determine whether the promotion of commerce in agricultural products should be placed in the Department of Commerce or in the Department of Agriculture; and in regard to numerous other activities. Any plan of reorganization will provide better coördination along some lines, but it inevitably opens up new demands for coördination. Coördination is essential at all points of contact. Contacts arise because of four principal forms of similarity: purpose, activity or technique, class of people served, and geography or area. The mere reorganization of the government will at best provide effective coördination along only one line. Other methods must be used to provide coördination along other lines.

Coördination along other lines than that provided by the regular line or directorial organization may be provided by the use of staff agencies, joint boards, and careful planning. Numerous examples of the use of these methods exist in the various departments and bureaus of the government. After a careful study of these methods, it is found that the most effective agency for this purpose is the staff. This agency is usually charged with the preparation of policies, technical standards, and plans. Examples of successful staff organizations are the technical and general staffs of the army. In each geographical area, all of the military activities, such as artillery, etc., are directed and coördinated by a commanding general. On the other hand, the coördination of the infantry service throughout the army is accomplished by the chief of infantry, a staff officer. He formulates the policies and supervises the technique of his particular branch. The coördination of the artillery, of the cavalry, and of each of the other branches is accomplished in a similar manner by staff officers.

In addition to these technical staffs, there is a general staff which prepares general plans of personnel, supply, information, and operations for the army. A staff organization exists in nearly every bureau and many offices of the government.

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A proper relationship of staffs to the line or directorial officers is essential; otherwise, division of authority and irresponsibility will result. Under no circumstances should the staff officers be given authority to direct details of the work. The preparation of policies, standards, and general plans may be entrusted to staffs, provided that the line officers have the right to appeal to the head of the organization in regard to such matters and to deviate from such instructions in emergencies. Staffs must be careful not to destroy the sense of responsibility of line officers.

A large number of inter-departmental and inter-bureau boards exist in the government, and they are performing important and useful functions. Many of these agencies have an advisory status only—they leave the final decision with those who are charged with the responsibility of performing the primary functions of government. Some of them, however, are charged with the direction of certain activities or the formulation of policies and rules which have binding effect. The grant of directorial authority to joint boards is open to the objection that it divides authority and responsibility, causes delay, and often provides a personnel that has neither the time nor the qualifications for the special tasks of the board. Joint boards as advisory bodies are very important, for they give the different establishments represented an opportunity to express their views, iron out differences of opinion, and overcome a considerable amount of friction. They are especially successful when they operate in conjunction with a staff organization, or when one person is responsible for securing results in the form of preparing plans for coördination.

No matter how perfect a coördinating organization may be provided, little will be accomplished without careful planning. A determination of the nature of the services to be performed by different establishments is essential for an efficient performance of the work. For example, when one agency conducts a criminal investigation and makes the arrests while another prosecutes the criminals, the former must be on the lookout for the facts required by the latter. The determination of the proper sequence of operations, definite assignments of tasks, the elimination of duplication, and the determination of technique are other phases of planning.

Plans may be prepared in either of two ways. First, they may be formulated and promulgated by a central organization such as a staff or the head of the establishment. The War Department follows this method, the General Staff being charged with this responsibility. The other method is decentralized initiation and centralized review and coördination of plans. This procedure is especially applicable when there are local conditions requiring different treatment. The project method of the

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Food and Drug Administration is an excellent example of this procedure.

The essential features of the project method from the standpoint of coördination are the classification of the work in a manner which serves as a basis for uniform planning and comparison of activities, the initial planning by subordinate line or directorial officials, the coördination of these plans in conference with the head of the organization, the adoption of a definite schedule of operations for the year, and careful control in order to insure the execution of the program. As a basis for planning, the Administration maintains a classification of the products upon which it is working. These classes are termed "projects."

The Administration is organized geographically into three districts, with a district chief in charge of each. Prior to the beginning of each fiscal year, each district chief, in consultation with the station heads in his district, prepares a preliminary program of work for each station for the ensuing year. The field officers are required to possess rather definite familiarity with manufacturing and marketing conditions in their respective territories. Consequently, they are able to estimate the character and cost of the work required to correct or improve those conditions. The preliminary programs of work include a statement of the projects which the local officers propose to emphasize, a schedule showing the time to be allotted to each project, and an estimate of the funds and number of men required to execute the plan.

The chief of the Administration calls a conference of these district chiefs and the staff specialists of the Administration. The programs of work, after being submitted by the district chiefs, are studied carefully in conference and are compared with the results accomplished in previous years. A coördinated plan of operations for the whole Administration is then prepared, including a uniform schedule of activities, and a distribution of funds and assignment of personnel among the districts. While the schedule of major activities is uniform throughout the Administration, provision is made for those projects which are of greater importance in one district than in the others.

Decentralized initiation, combined with centralized coördination of plans, is a procedure which offers great possibilities in other establishments or in the government as a whole. In fact, the government has an application of this in a limited field in the budget system. Its use might well be enlarged.

When the work is such that specific plans are impracticable, the desired results may be secured in large measure by the application of definite policies. This procedure is really the grouping together of a large number of problems and the preparation of general principles applicable to a variety of circumstances. This combines decentralization with centralized supervision and coördination.

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The Army and Navy have a method which accomplishes results when lack of time or urgency of decision prevents the issuance of coördinating orders by the commanding officer. This is indoctrination. A system of teaching and training furnishes a basis for the application of principles and instructions to specific situations. It goes farther than the issuance of policies, for it consists in the application of principles to concrete cases. Doctrines are prepared through coöperative study of the commanders. Through study, training, and agreement, the habits of thinking of officials are molded into a common form, and unity of action results even though decisions affecting different parts of the plan are made by different individuals.

Indoctrination has the advantage of flexibility; but it is more effective than mere coöperation. While the commander of each subordinate unit is permitted to make his own decisions, he knows that he will be held responsible for those decisions and for dovetailing his plans with those of other commanders. Indoctrination, or training in the application of principles, combines the flexibility of decentralization with coördination and centralized control.

Since it is clear that coördination is necessary along several lines, the question arises concerning the most desirable basis for the departmental organization of the government. Class of people served, and geography or area, may be dismissed from our attention as impracticable and undesirable, at least at the present time. They may, however, serve as bases in determining the subdivisions of the department. It remains to choose between purpose and type of activity. Purpose would be a highly desirable basis if it were possible, but a few examples will demonstrate that the government cannot be organized in this way. With an organization on the basis of purpose, where would one place the inspection of meats, which aims to promote health and also to promote commerce? With purpose as a criterion, one would abolish the Department of Justice and leave the prosecution of various laws to the different departments—violations of the public health laws to a public health agency, violations of the navigation laws to the department interested in the promotion of commerce, etc. The primary basis upon which the activities should be grouped into departments is the type of activity.

How shall the coördination of first importance, that of activities having a common purpose, be accomplished? The solution is found in the creation of a general staff agency in the form of a department of planning and general administration. In this department there should be a separate bureau charged with planning in regard to each general purpose. While no positive or dogmatic proposal should be advanced concerning the organization of this department, it is believed that the following three purposes may prove suggestive: economic welfare planning, social welfare planning, and defense planning. At no time in American history has there

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been a greater need for the consistent planning of all of the activities of the government concerned with economic welfare and development of the country. There is no department of the government that is not interested in some way or other in this subject. Certainly if our national government is to launch upon a program of national economic planning, a general economic staff is needed. Similar reasoning may be applied to social welfare and to defense activities. In addition to these planning activities, the provision of institutional services such as personnel, budget, and supply may logically be entrusted to this department.

It is not proposed that all the planning of governmental operations be centralized in this department. Plans affecting only one department or establishment should be prepared by that organization. Our planning department would consider only those problems which affect the relationship of one administrative unit to another. It would be a coördinating agency. Furthermore, this staff agency should have no directorial authority. It should be advisory and investigational only. Plans prepared by this agency would have no effect until approved by the President. The execution of all plans should be left to the departments and establishments. In this way, coördination on the basis of purpose can be accomplished without destroying the sense of responsibility of the line officials, such as departmental and bureau heads, for the direction and coördination of their respective units. Such a staff organization would go far toward the establishment of an efficient administration and the effective accomplishment of the purposes of the government.

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The Saar Plebiscite. The Treaty of Versailles provided that at the termination of a period of fifteen years from its coming into force, a plebiscite should be held in the Saar Territory to determine under what sovereignty its inhabitants desired to be placed.[1] The following conditions were laid down for the plebiscite: "A vote will take place by communes or districts on the three following alternatives: (a) maintenance of the régime established by the present Treaty and by this Annex; (b) union with France; (c) union with Germany. All persons, without distinction of sex, more than 20 years old at the date of voting, resident in the Territory at the date of signature of the present Treaty, will have the right to vote. The other conditions, methods, and the date of voting shall be fixed by the Council of the League of Nations in such a way as to secure the freedom, secrecy, and trustworthiness of the voting."[2]

Since the treaty came into force on January 10, 1920, the Council of the League of Nations in its session in January, 1934, took the matter under advisement. After due deliberation, a committee of three, consisting of the representatives of Italy, Argentina, and Spain, was set up. "(a) to study measures calculated to ensure by all appropriate means the regularity of the electoral proceedings; (b) to take particularly into consideration the study of the appropriate means of safeguarding the population against pressure of any kind and the execution of any threats likely to affect the trustworthiness of the voting; (c) to study any suggestions that may be submitted to it by the Governing Commission as regards the maintenance of order during the period of the plebiscite."[3]

Between January and June, the committee met several times and secured the help of technical experts. The same committee, through its chairman, Baron Aloisi, wrote to the French and German governments on June 1, 1934, inviting a formal declaration of the resolve of each to fulfill the provisions of the Treaty of Versailles, and specifying the steps proposed to this end. The governments replied on June 2, 1934, in identic notes, each undertaking: "(1) to abstain from pressure or

[1] The most exhaustive and satisfactory treatment of the Saar problem is contained in the two information department papers put out by the Royal Institute of International Affairs in London: No. 11, *The Saar Problem*, and No. 14, *The Saar Plebiscite. Foreign Policy Report*, Vol. 10, No. 22 (January 2, 1935), is also very useful. Various releases by the Information Section of the League of Nations are indispensable. See also A. Grabowski and G. W. Sante, *Die Grundlagen des Saarkampfes*, (Berlin, Heymanns, 1934), and Michael T. Florinsky, *The Saar Struggle* (New York, Macmillan, 1934). Sarah Wambaugh, *Plebiscites Since the World War*, 2 vols. (Washington, Carnegie Endowment for International Peace, 1934) is the standard work on plebiscites.

[2] Treaty of Versailles, Pt. III, Sect. IV, Annex, Art. 34.

[3] League of Nations, *Official Journal*, January, 1934, p. 161.

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reprisals and to prevent or punish any action by its nationals contrary to these undertakings; (2) to establish and maintain for a transitional period of one year as from the establishment of the final régime a Supreme Plebiscite Tribunal, with powers to hear complaints regarding pressure, prosecution, reprisals, or discrimination, and to order any appropriate reparation; (3) to bring any difference arising with any member of the Council on the subject of these undertakings before the Permanent Court at the Hague."[4]

In a resolution passed on June 4, 1934, the Council noted these undertakings, guaranteed to see to their fulfillment, and fixed Sunday, January 13, 1935, as the date of the plebiscite. Further resolutions, contained in the report of its committee of three covering the organization and execution of the plebiscite, were also adopted.[5]

These resolutions provided first of all for the creation of a plebiscite commission under the authority of the Council for the organization, direction, and supervision of the plebiscite. This commission was appointed by the Council and consisted of the following persons: M. Victor Henry (Swiss), M. Daniel de Jongh (Dutch), and M. Alan Rodhe (Swedish), with Miss Sarah Wambaugh (United States) as technical adviser and deputy member.

In the second place, the general regulations for the plebiscite were laid down, and covered all the necessary points such as right to vote, status of a resident, the voting districts, compilation of the voting lists, voting procedure, election offenses, etc. It was also provided at the same time that the vote should take place by unions of communes, or *Bürgermeistereien*, or in the case of communes not forming part of any union, by communes (such, for instance, as *Saarbrücken Stadt*). Thus each union of communes and each commune which does not form a part of a union constituted a voting area. These areas already existed, and were 83 in number. Under the regulations adopted, a bureau of neutral election officials was established in each of the eight counties, or *Kreise*, into which the territory is divided to carry out the order of the Plebiscite Commission and "to secure the freedom, secrecy, and trustworthiness of the voting." In all of the 83 voting areas, communal committees presided over by neutrals were made responsible in the first instance for compiling registers of qualified voters. The members of all of these committees were appointed by the Plebiscite Commission.

In the third place, a supreme plebiscite tribunal and eight district tribunals were set up with jurisdiction over registration matters, offenses covered by the plebiscite regulations, and breaches of ordinary criminal

[4] League of Nations, *Official Journal*, June, 1934, pp. 651–653.

[5] These resolutions are found in League of Nations, *Official Journal*, June, 1934, pp. 647–650.

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law (in so far as connected with the purpose of the plebiscite) committed before, during, and after the plebiscite proceedings. All of the judges and officials of the Supreme Court and the district tribunals were appointed by the president of the League Council after consultation with his colleagues and on the proposal of the Council committee. The judges know German, and are from countries not involved in the plebiscite. These courts began their work on October 1. The Supreme Plebiscite Tribunal will remain in office for one year following the establishment of Germany in full control.

Finally, the responsibility of the Governing Commission of the Saar Basin for the maintenance of order was established, and by a later resolution of December 8, 1934, the Council invited Great Britain, Italy, Sweden, and Holland to supply contingents which should act under the authority of the Governing Commission. This international police force, itself the subject of a special agreement dated December 12, 1934, was placed under the command of a British general and consisted of 1,500 British, 1,300 Italian, 260 Swedish, and 250 Dutch soldiers. This force entered the territory during the third week in December and continued to act as an emergency reserve and not to perform ordinary police duties, which were left to the local gendarmerie.[6]

The Plebiscite Commission began its work on July 1, 1934, and issued the final text of the regulations for the plebiscite on July 7. The first task was the compiling of the voting lists. According to the treaty, all persons without distinction of sex or nationality, more than 20 years old and resident in the Saar Territory on June 28, 1919, were entitled to vote. The qualified persons who were living in the Saar were registered without application. The others were registered upon request. The actual drawing up of the lists was carried out by the communal committees referred to above. Use was made of police registers and of the documents collected in 1922 and 1923 by a League commissioner, Dr. Bonzon. After the lists had been publicly posted on September 23, every inhabitant of the Saar was given the right for a month to make a claim (*Einspruch*) for cancellation (*Streichung*), rectification (*Berichtigung*), or registration (*Eintragung*). These claims were decided by the district bureaus after receiving the advice of the district judges. Another fortnight was given the parties concerned to lodge an appeal (*Rekurs*) with the Supreme Plebiscite Tribunal.

[6] The cost of the plebiscite is to be borne by the German and French governments and by the Governing Commission. At the request of the Council, each of the two governments provided five million French francs and the Commission one million. This amount proved insufficient and at its September meeting, 1934, the Council asked for a further advance from each of the parties concerned. The final cost of the plebiscite, including the cost of the international police force, has not yet been determined.

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The following figures give the essential facts. It became very clear on election day that the registration work had been done carefully and correctly.

Registration Figures

Total number of qualified voters	539,541
Voters coming from Germany	48,500
Voters coming from other countries, principally from France	6,500

Number of claims	*Presented*	*Approved*	*Percentage*
for registration	32,854	18,540	56.4
for cancellation	46,033	7,217	15.6
for rectification	28,258	28,210	99.08
	107,145	53,967	50.0
Number of appeals			
for registration	7,400	1,365	18.4
for cancellation	1,844	1,018	55.2
for rectification	4	4	100
	9,248	2,387	25.8

Between the preparation of the lists and election day, momentous decisions had been taken under the auspices of the League Council's committee of three. The international police force was arranged for, and the Rome agreement of December 3, communicated to the Council two days later, dealt comprehensively with the numerous outstanding problems which it was desirable to settle prior to the plebiscite. The action of the Council at this meeting, together with the important agreements arranged by its committee of three between the French and German governments, provided an auspicious and very necessary background for the plebiscite.[7]

All was in readiness when election day arrived. Under the regulations, the presidents of the voting bureaus had to be chosen from countries in no way connected with the plebiscite. Since the territory had been divided into 862 voting districts, each with approximately 600 registered voters, the Commission was faced with the difficult task of securing qualified persons from neutral countries who were able to speak German and who could conduct the election. Good preparations would be fruitless if the voting itself were not carefully safeguarded. Consequently, the Commission took pains to secure competent persons. Judges and burgomasters from Holland, public officials of all kinds from Switzerland and Luxemburg, and a scattering of persons from other countries made up the list.[8]

[7] For the details of these arrangements, see League of Nations, *Official Journal*, December, 1934.

[8] The presidents were taken from the following countries: 365 from Holland;

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These officials arrived several days before the plebiscite to receive their final instructions. They found that the preparations for the election had been very carefully arranged by the Commission and its assistants. The polling stations were located mostly in schools and other public buildings, and each station was properly equipped to handle some 600 voters. In addition to the neutral president, each precinct election board was composed of two regular election inspectors and two assistants chosen from among competent persons in the area. As nearly as possible, these local members were drawn equally from the two sides of the plebiscite political campaign. All of the locally selected members of the election boards worked together in complete harmony with the neutral presidents, and no case of disagreement was reported to the Commission headquarters. Many of these local election board members were officials of one sort or another, as well as professional people.[9] They resembled very closely the personnel of election boards in the pre-Hitler Germany.[10] They served without pay and with efficiency and faithfulness. Too much cannot be made of this part of the election process, for as any election expert knows, everything on election day depends upon the election boards.

In Saarbrücken, the largest city of the area, the voters were divided alphabetically into precincts, so that they had to travel in most cases outside of the voting districts in which they actually lived. Part of the Brauns for instance were in *Wahllokal* Number 13, and the Schneiders in *Wahllokal* Number 139. Another feature added somewhat to the inconvenience of the voters. Votes were cast in the voting divisions where the voters resided in 1919. But it should be noted that these two arrangements both operated to eliminate any possible intimidation of voters by their neighbors. Much running about the whole area was, of course, made necessary, for the trains carried some 80,000 voters who voted in a division other than the one in which they were living. Some 55,000 non-resident voters were also transported to the polling places. But nothing prevented the Saarlanders from casting their votes. Despite the necessity of travelling some distance to his polling place, despite several inches of slush and snow, despite physical infirmities, "Adolf Saarlander" managed to get to his voting booth to cast his ballot. Unprecedented numbers of old and disabled persons appeared, one man 95 years old

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350 from Switzerland; 220 from Luxemburg; 6 from Denmark; 4 from Great Britain; 3 from Italy; 1 from Sweden; 1 from the United States. (The president from the United States was Professor J. K. Pollock, author of this article. *Man. Ed.*)

[9] Local members of election boards were permitted to vote in the precincts where they were working.

[10] See my *German Election Administration* (Columbia University Press, 1934), pp. 21–24.

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travelling from Berlin to vote. When he was asked whether he needed assistance in marking his ballot, he replied that he could still see![11] The youngest voters were, of course, just 20 years old.

The voting proceeded very expeditiously. Despite a strong rush to the polls in the morning, the voters were not required to wait in line very long.[12] Local police were assigned to each polling place to regulate the flow of voters and to be present in case of any disorder—which incidentally never occurred in any part of the area. The names of all voters entitled to vote in a precinct were posted on a board at the entrance to the polling place. As the voter came to the table where the officials were located, he was required to present an election certificate (*Ausweis*) which had been sent to him, as well as to present his passport or *carte d'identité*. The neutral president of the board was required to assure himself that the certificate was genuine, that the person presenting himself was the person he claimed to be, and also that he was properly entered on the registration list. The picture on the passport or *carte d'identité* was sufficient, but the other two checks were useful. This system proved to be almost faultless. No fraud was likely to occur, and in fact none was attempted. (This was Saarbrücken and not Chicago!) When the president was satisfied that the voter was qualified, he handed him an envelope and a ballot, and directed him to a booth. After he had marked his ballot, his passport or *carte d'identité*, which had been stamped, was returned to him, and his election certificate, which was also stamped, was retained. His ballot was handed to the president, who deposited it in the urn.

A facsimile of the ballot is presented on page 281. It had been printed secretly in Holland and differed slightly in color from the ballots which had been used the week before for government employees.[13] The ballot was simple and clear and was marked with great promptness by the voters, probably no more than half a minute being used by the average voter.

The polls remained open from eight-thirty in the morning until eight in the evening. When the voting ceased, the election boards made out the protocol, which had to contain the number of election certificates collected, and the number of ballots and envelopes distributed to voters, as well as other miscellaneous data. The urn was then sealed at the opening—it had been locked at the opening of the polls—and all was in

[11] The number of assisted voters was very small. In my own precinct, out of 616 on the registration list, only six persons asked to be helped by a son or daughter.

[12] In my precinct, 324 voters voted in the first three hours.

[13] Some 20,000 employees in various Saar administrative services were permitted to vote in a special election arranged for January 7 and 8. The ballot was therefore changed for the plebiscite proper to guard against any possible use of any surplus ballots which might have been given out on the first day.

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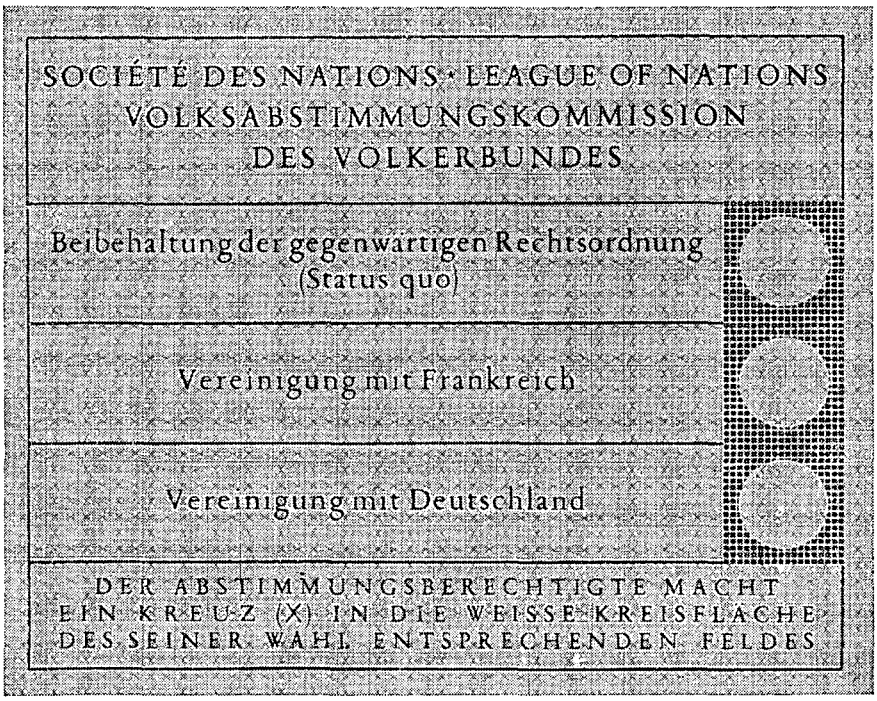
readiness for the officials who were to pick it up and take it to the building where the central count was to be made. After some delay, the district inspector with a squad of English soldiers with bayonets drawn appeared, receipted for the ballot box and other supplies, and took them under guard to the designated building. There the ballot boxes and supplies were kept under guard until five o'clock the following afternoon, when the counting began.

Some 300 counters and 60 supervisors, all neutrals, conducted the count. The members of the Plebiscite Commission were present at all



times, and representatives of the press and officialdom were admitted to the galleries to watch the process. Five counters were placed at a table, and to each table was given, on the average, 14 ballot boxes. After the envelopes were counted and checked against the protocol, the ballots were taken from the envelopes and counted according to the opinions expressed. As precincts were completed, the figures were taken to the Commission, which kept them entirely secret. By five o'clock in the morning, the counting was completed; but the counters were required to remain until eight o'clock, when the result of the plebiscite was announced by radio in three languages—German, English, and French.

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The official result of the vote was as follows:

Number of qualified voters	539,541	
Votes cast	528,005	(97.87%)
For union with Germany	477,119	(90.36%)
For the status quo	46,513	(8.81%)
For union with France	2,124	(0.40%)
Blank ballots	1,256	
Invalid ballots	901[14]	

Since the treaty required the vote to be taken by districts, it was also important to have the results given according to the 83 *Bürgermeistereien.* But it is not necessary to present these figures here, for in no case was the vote for Germany less than 80 per cent.[15] In the city of Saarbrücken, the vote for the status quo was 14 per cent; in Neuenkirchen, it was 13.3 per cent; in Homburg, 14.5 per cent; in Wallerfangen, 16 per cent; in the city of Saarlouis, where Vauban erected a fortress in 1680 for Louis XIV, only 11.6 per cent; and in Merzig, only 5 per cent. A very clear decision had been registered, and the task of the Council of the League of Nations in awarding the territory was made very simple.

On the day following the vote, the Plebiscite Commission departed for Geneva with the ballots in order to make its report to the Council. On January 17, 1935, the Council, accepting the report of its committee of three headed by Baron Aloisi, decided to set March 1 as the date for the return of the area to Germany, to turn over to the committee of three the task of ironing out all of the difficulties between France and Germany consequent upon the change of status, and to require agreement on all matters by February 15; otherwise a special meeting of the Council should be summoned. On March 1, according to schedule, the territory was handed over to Germany.

Thus a great international problem has been amicably and satisfactorily settled. Perhaps it is too sanguine to say that the problem has been settled by the plebiscite, for it is entirely possible—in fact, quite likely—that various difficulties, both human and financial, will arise in the coming year, or even for five years, which will cause serious international trouble. Opportunity is not given in this article to discuss such matters. But, in any case, the plebiscite was managed in a most creditable manner. Despite great difficulties, the entire machinery functioned faultlessly from beginning to end, and high tribute should be paid the Plebiscite Commission, and the League Council which created it, for so competently serving the interests of justice and peace.

University of Michigan. JAMES K. POLLOCK.

[14] Many of these ballots were marked for Germany, but contained the words "*gegen Hitler.*"

[15] The complete official returns by districts as given out over the radio may be found in *Le Temps*, January 16, 1935, and in the League of Nations documents C. 44(1), M. 19(1). 1935. VII.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The chairman of the committee on program for the Atlanta meeting of the American Political Science Association next December is Professor James Hart, of the Johns Hopkins University, and the chairman of the committee on local arrangements, Professor Cullen B. Gosnell, of Emory University.

The membership of the Committee on Policy of the American Political Science Association for the year 1935, with assignments to sub-committees, is as follows (with Thomas H. Reed as general chairman):

Research: Arnold B. Hall, chairman, Charles E. Merriam, George W. Spicer, Francis W. Coker *ex-officio*

Political Education: Cullen B. Gosnell, chairman, Ben A. Arneson, James Hart

Personnel: Phillips Bradley, chairman, William Anderson, Luther B. Gulick, Marshall E. Dimock, Clyde L. King *ex-officio*

Publications: Amry Vandenbosch, chairman, Phillips Bradley, Finla G. Crawford, Frederic A. Ogg *ex-officio*

Materials for Instruction: Finla G. Crawford, chairman, Ben A. Arneson, Charles A. Beard

Dr. Herbert von Beckerath, professor of economics and political science at the University of Bonn, is visiting professor of economics at Bowdoin College during the present academic year.

Professor Marshall E. Dimock, of the University of Chicago, completed his study of the administration of the Inland Waterways Corporation during the latter part of December. His report was submitted to Secretary Dern, who has since given permission to publish the survey.

Dr. Leonard D. White, of the U. S. Civil Service Commission, delivered a series of six lectures at the University of Chicago, February 14–20, on "The Bases of an Administrative Career Service."

Professor Harold J. Laski, of the London School of Economics and Political Science, gave a series of lectures at the University of Illinois on April 10 and 11. His subjects were: "Political Conditions in England," "The Crisis in Political Philosophy," and "Prospects for Peace in Europe."

Dr. Charles B. Hagan, assistant in political science at the University of Illinois, has been appointed to an instructorship at Smith College for the year 1935–36.

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Dr. Luther Gulick, director of the Institute of Public Administration, is research director for the New York State Commission for the Revision of the Tax Laws. The report of the Commission, which will be delivered to the legislature during the 1935 session, will deal with the problems of county government in the state. Howard P. Jones, Lewis B. Sims, Paul Studenski, N. P. Catherwood, John J. Theobald, Audrey Davies, Lyle Chubb, and others are members of the research staff.

Mr. Bruce Smith, of the Institute of Public Administration, was appointed by Governor Lehman as a member of the New York State Law Revision Commission. Mr. Smith is also a member of the New York State Commission on the Administration of Justice. This Commission rendered a comprehensive report in 1934, but continues its work through its committee on the revision of the code of criminal procedure.

Hon. Burton L. French, former member of Congress from the first Idaho district, has accepted for the year 1935–36 a professorship in the department of government and politics at Miami University. He will conduct sections in the introductory course in American law-making and administration, and advanced courses in political parties, public administration, and world politics.

During February and March, Professor Felix Frankfurter, of the Harvard Law School, delivered a series of six lectures at the New School for Social Research, New York City. The general theme was problems of federalism, and the objective was stated as being "to indicate the methods by which our federal scheme is adjusted to the requirements of the current situation."

At the request of Secretary Morgenthau, Dr. A. E. Buck, of the Institute of Public Administration, was loaned to the United States government as technical adviser to the Bureau of the Budget during the preparation of the budget for the fiscal year 1936. Mr. Buck has now returned to the Institute, but will continue during 1935 to give some time to the Treasury's problems.

The eighth annual session of the Institute of Politics was held at Emory University, February 11–15, with Professor Cullen B. Gosnell as director. Among subjects dealt with in round tables, open conferences, and formal addresses were labor relations in the South, the cotton crisis, the short ballot, the T.V.A., political problems in the South, taxation, the responsibilities of business in government, and the Georgia legislature.

A series of extension courses in municipal administration, announced recently by the Institute for Training in Municipal Administration,

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Chicago, implements the suggestion of the Commission of Inquiry on Public Service Personnel in its recent report that more adequate training must be provided for men on the job in order to develop "the career service system." The Institute was recently established by the International City Managers' Association for the purpose of developing a well-rounded training course in the administration of various municipal functions. The first of the series of extension courses made available by the Institute is "The Organization and Functions of Municipal Government." It will be followed shortly by four other courses: "Public Works Administration," "Municipal Personnel Administration," "Fire Administration," and "The Technique of Municipal Management."

At the first Interstate Assembly, held in Washington in 1933 under the auspices of the American Legislators' Association and the Council of State Governments, a hundred delegates from thirty-two states discussed problems of common interest, especially as related to conflicting taxation, and out of it grew the Interstate Commission on Conflicting Taxation. The second such conference took place in Washington on February 28 and March 1–2 of the present year, with about one hundred and twenty-five governors, members of legislatures, and others—representing practically all of the states—in attendance. Again the principal subject for discussion was conflicting taxation.

Under the editorship of Robert M. MacIver, professor of political philosophy and sociology at Columbia University, John Dickinson, professor of jurisprudence at the University of Pennsylvania and assistant secretary of commerce, Paul Klapper, dean of the school of education at the College of the City of New York, Carl Becker, professor of history at Cornell University, and Jacob Viner, professor of economics at the University of Chicago, a new *Journal of Social Philosophy: A Quarterly Devoted to a Philosophic Synthesis of the Social Sciences* has set for itself the task of contributing toward the elaboration of a sound social philosophy based upon the data of the various social sciences. Such a journal, it is felt, should "serve to counteract, in the interest of sane social intelligence, the twin evils of blind empiricism and empty verbalism which at present conspire to render intellectually barren and practically inefficacious the findings of the social sciences." The first number is scheduled to appear in October.

The *News Bulletin* of the Public Administration Clearing House reports that on January 22 an American Society of Planning Officials was organized. The purposes of the society are to act as a clearing house for the exchange of information and the improvement of administrative standards and practices in land and community planning, and to serve

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the increasing body of national, state, regional, and local planning agencies and their staffs and consultants. The society takes its place among the sixteen other associations of public officials which have set up their headquarters at 850 East 58th Street, Chicago. The president of the new organization is Mr. Alfred Bettman, of Cincinnati, president of the National Conference on City Planning and regional director of the National Resources Board.

The Institute for Advanced Study, founded in 1930, and its first unit, the School of Mathematics, opened three years later, announced in January the establishment of another unit to be known as the School of Economics and Politics. The new school, to be opened at Princeton in the fall, will carry out the same informal plan of study and research as its companion unit, of which Professor Albert Einstein is a member. The appointment of three professors was also announced: Winfield W. Riefler, chairman of the Central Statistical Board and economic adviser to the executive council of the Federal Reserve Board; Edward M. Earle, professor of history at Columbia University and Barnard College; and David Mitrany, at various times lecturer on government and politics at Harvard, Yale, and Princeton Universities.

Under the auspices of the Canadian Political Science Association, a new quarterly periodical known as the *Canadian Journal of Economics and Political Science* was launched in February. "During the last twenty-five years," writes Professor D. A. MacGibbon, president of the Association, in a foreword, "there has been a striking increase in Canada in the number of people professionally trained in economics and politics. Articles from Canadian scholars have not infrequently appeared in journals devoted to these subjects in the United States and Great Britain. But in the nature of the case, as the secretary of the Association pointed out in his report of a year ago, Canada has many distinct problems of her own. Canadian scholars could scarcely expect to find a medium for their discussions in either of the above countries. The proper place to examine and discuss them is in a Canadian journal. Moreover, it is a peculiarity of many of these problems that, while chiefly growing out of the economic *milieu*, due to our federal constitution, they involve collateral problems in our political arrangements. Canadian economists and political scientists have found much to their advantage in meeting together in the Canadian Political Science Association. Collaboration in the production of a common journal should prove equally advantageous." The AMERICAN POLITICAL SCIENCE REVIEW extends greetings and best wishes to its sister publication across the border.

The Encyclopedia of the Social Sciences. With the publication of the fifteenth and final volume of the *Encyclopedia of the Social Sciences*, this

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monumental project has been brought to a definitive stage. Reviews of earlier volumes have already appeared in this journal,[1] and a general estimate of the work as a whole may be expected in a subsequent number. But it seems appropriate at this time to present a survey of its main characteristics and contents, with special reference to the features of particular interest to the members of the American Political Science Association.

A proposal for a work of this kind was made in 1923; and in 1927, under the leadership of Professor E. R. A. Seligman of Columbia University, a joint committee from ten learned societies in different fields of the social sciences formulated the general plan. A non-profit organization was created, with a board of directors of eleven academic and seven lay members. Professor Seligman was selected as editor-in-chief, with Alvin Johnson as associate editor, a group of advisory editors from the constituent societies and foreign countries, and a staff of assistant editors.

The American Political Science Association is represented on the joint committee, the board of directors, and the advisory editors; and many articles in the field of political science have been written by members of this Association, and others by prominent foreign writers in the field. Among these may be noted Charles A. Beard, Frank J. Goodnow, William B. Munro, Ernst Freund, F. W. Coker, E. S. Corwin, W. F. Dodd, James W. Garner, A. N. Holcombe, Lindsay Rogers, W. J. Shepard, L. D. White, Quincy Wright, Ernest Barker, Gaston Jèze, H. J. Laski, and W. E. Rappard.

The general scope of the work may be compared with that of Lalor's *Cyclopedia of Political Science, Political Economy, and of the Political History of the United States*, published fifty years ago; and in the field of political science with the *Cyclopedia of American Government*, published in 1914. Both of these earlier works were in three volumes, as compared with fifteen in the present undertaking. Lalor gave relatively more attention to political history; while the new Encyclopedia, in addition to later and more extended articles in economics and in other fields covered by Lalor, also embraces other related fields, such as education, law, philosophy, psychology, social work, sociology, and statistics; and also the social aspects of art, biology, geography, medicine, and science in general.

In the field of political science, the present work may be estimated to give about as much space as the *Cyclopedia of American Government*,[2] but with important variations in distribution. There is more attention to foreign governments and problems; also, a large number of new titles deal with new developments of the last twenty years. A series of articles

[1] Vol. 25, p. 769; vol. 26, p. 1136; vol. 27, pp. 154, 1018; vol. 28, p. 1136.

[2] See this REVIEW, Vol. 9, p. 793 (1915).

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on government, and others on legislative assemblies and political parties, cover all of the more important countries. New topics, and those largely new in content, include administration, administrative law, administrative organization, civil service, constitutional conventions, international law and organization, League of Nations, World Court, jurisprudence, law, and many dealt with in special articles on legal problems. The general article on political science, by the late Professor Heller of the University of Madrid, may be specially noted; while a large list of specialized articles deal with such subjects as bolshevism, communism, democracy, dictatorship, fabianism, fascism, freedom of speech and the press, individualism, legislation, local, county, and municipal government, monarchy, representation, and socialism.

Not only the subject-matter, but the method of approach, is distinctly scientific. The work is not based on any preconceived attitude or point of view, other than the ascertainment and presentation of the impartial results of careful observation and analysis. Differences of opinion will be found in the articles by different writers, and the aim throughout has been to present all views deserving of careful consideration. An underlying aim of the work has been the integration and synthesis of the different fields of the social sciences.

The method of treatment takes a middle ground between the preponderance of lengthy treatises on large subjects, which characterized especially the ninth edition of the *Encyclopedia Britannica*, and the marked tendency toward brief articles and even paragraphs on minor topics in the *Cyclopedia of American Government*. A number of important subjects are treated at considerable length, with separate articles by different authors; while most of the articles give a substantial but not extended discussion, with numerous cross-references to articles on related topics. A special feature is the numerous brief biographies of important writers in the various social sciences. Those dealing with foreign authors not often noted in English and American biographical dictionaries will be of special interest to American readers. Bibliographical references enable the reader to locate the best available works for further study; while a general index furnishes detailed references to specific topics.

A work of this kind could be prepared only with a large expenditure. The original estimate of the cost was $625,000. But as the undertaking progressed, the cost has mounted to nearly double that figure. In addition to modest payments to the contributors, the work of the editorial staff in formulating the detailed plans, verification and editing, and in some cases revising articles, has probably been more thoroughly done than in any other work of the kind. Most of the cost has come from several foundations and private subscriptions; while the publishers have advanced a substantial sum to make possible the completion of the work.

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The Encyclopedia will be of value to various classes. The specialist in a limited branch of one of the general fields will probably find little that is new, but he will find much of value dealing with other branches of his general field, and in the articles dealing with other social sciences. The work should be in every library of any importance—public, college, university, and many school and special libraries. College and university teachers of political science and of the other social sciences should have a copy. Editors and students of political and social problems should have it at their desk. Those active in public affairs, in or out of public position, will find it essential as a manual of reliable data. The general reader will find it a useful source of information on a wide range of topics in all fields of social study and action.—JOHN A. FAIRLIE.

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The Open Door at Home; A Trial Philosophy of National Interest. By CHARLES A. BEARD. With the collaboration of G. H. E. Smith. (New York: The Macmillan Company. 1934. Pp. viii, 331.)

The subtitle gives the key to this volume. It sets forth what the author believes to be the true interest of the United States in the matter of trade and markets. This true national interest, as Dr. Beard sees it, consists in frankly giving up the attempt to maintain open doors for American trade abroad and concentrating our energies upon the home market. He would have us "substitute an intensive cultivation of our own garden for a wasteful, quixotic, and ineffectual extension of interests beyond the reach of competent military and naval defense."

This general proposition is supported by thirteen chapters of trenchant writing in which many current formulas of American commercialism are bowled over. Possibilities for the marketing of surplus American goods abroad are far less extensive than trade promoters have led the country to believe. That thesis is backed by a survey of the alleged opportunities for commercial expansion in various parts of the world. The "boundless opportunities" for trade and investment in China, for example, are found by Dr. Beard to be a figment of some vivid imagination in the Department of Commerce at Washington. In a country where the people buy kerosene by the gill and salt by the quarter-ounce, it takes a population of millions to equal the market of a fair-sized American town. So China's buying power, he insists, is not high enough to sustain a large foreign trade with any country. Hence "its significance to American economy as a whole is and must ever be relatively trivial" (p. 59).

But if the outlets for the marketing of America's industrial and agricultural surplus abroad are wholly inadequate, what is to be done with this excess production? Dr. Beard believes that it can and must be marketed at home, in other words that there need be no appreciable surplus at all. What the American people can use or consume is a variable. No one can set a maximum limit on it, because so much depends upon standards of living and the social organization which a country maintains. Some goods, no doubt, will be produced in over-abundance, and some will need to be imported. The two will about balance, but their total need not be large. The author does not envisage complete commercial isolation for his country, but he would have us come measurably close to it.

Such an arrangement, he believes, would bring the United States fairly nigh unto Elysium. No need would there be for standing armies or armaments, a big navy, huge air forces, or embattled outposts. Dollar diplomacy would soon be defunct as the dodo. "Enthroned between two

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oceans, with no historic enemies on the north or the south, the Republic can be defended against any foes which such a policy might raise up against it" (p. 318). Other nations might tear themselves to pieces over the crumbs of foreign trade and drench their citizens with poison gas. Our people would sell them no munitions, lend them no money, give them nothing but pitying glances. All in all, something of an idyllic picture!

Yet this is not the day-dream of a visionary. None who have the privilege of knowing Charles A. Beard would ever catalogue him among purveyors of moonshine. His argument is well-reasoned, buttressed by appeals to history, and set forth in the engaging style of writing which the author has mastered so well. Whether the book will carry conviction to a national mentality which is so thoroughly steeped in the traditional pietisms of glory and grandeur is another question. One may agree or disagree with the volume's conclusions, but there will be no dispute as to the virility of thought which it displays. And there are not a few readers who will say, with Mark Twain, that "this book fed me in a very hungry place."

WILLIAM B. MUNRO.

California Institute of Technology.

The Twilight of the Supreme Court; A History of Our Constitutional Theory. BY EDWARD S. CORWIN. (New Haven: Yale University Press. 1934. Pp. xxvii, 237.)

In this little volume of lectures delivered on the Storrs Foundation at Yale, Professor Corwin has presented a brilliant realistic analysis of the main lines of development in the field of American constitutional theory. We have here the distillate from many years of exhaustive scholarship, and it is amazing how much substance, argument, and critical appraisal have been crammed into less than two hundred pages of text. It is also interesting to note how few are the significant questions in constitutional law which do not attach themselves relevantly to the four main concepts which are here dealt with. While the book is neither a constitutional history nor a textbook in constitutional law, it is a key to both.

The first lecture, "Dual Federalism versus Nationalism, and the Industrial Process," traces the competition of two conflicting ideas as to the nature of our federal system. "Dual federalism," sponsored by Madison, means that "the existence of the states furnishes an independent determinant of, or limitation upon, national power." In other words, the scope of the delegated powers of Congress is limited by the reserved powers of the states. Hamiltonian nationalism repudiated all such inferential limitations on national power, and held that the delegated powers of the federal government were plenary, limited only by the specific prohibitions of the Constitution itself. Upon this nationalism, in the face of the pro-

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tests and lamentations of Jefferson and Madison, Marshall built our constitutional law during his long régime on the bench. Under Taney, there was a swingback to dual federalism, which, in turn, was followed by the victory of the doctrines of nationalism that emerged from the Civil War. Largely under the influence of Chief Justice White, the doctrine of dual federalism was restored to life and made to do duty to head off national control of industry and commerce in the interests of economic *laissez faire;* while at the same time the theory of nationalism served to invalidate state laws impinging upon that same business and commerce. Justice Day's opinion in Hammer v. Dagenhart, invalidating the first child labor law as a violation of the doctrine of dual federalism, is subjected to devastating analysis, which holds up to ridicule a theory of the distribution of power under the Constitution whereby the states yielded up to the nation the power to control interstate commerce in the products of child labor and yet the nation never received that power. Professor Corwin believes that the doctrine of dual federalism has lost most of its vitality and that the major portions of the New Deal program will be sustained along the lines of a strong nationalism.

The second chapter deals with "Property Right versus Legislative Power in a Democracy." The patent desires of the framers of the Constitution to protect property were effectuated by the judicial development under the influence of Marshall, Kent, Story, and others of the doctrine of the sanctity of vested rights. Resting at first somewhat precariously upon the contract clause, the "spirit of the constitution," and other superconstitutional foundations, this doctrine of inviolate property rights at last found a resting place in the due process clauses of the Fifth and Fourteenth Amendments. At the same time, the demands of public interest and well-being were crystallized in the doctrine of the state's police power. The two doctrines of due process and police power present the court a wide freedom to give effect to their own ideas of social policy by leaning on the one or the other. "Due process means the approval of the Supreme Court." An interesting part of this chapter is Professor Corwin's attack upon the judicial doctrine that the due process clauses of the Fifth and Fourteenth Amendments impose identical restrictions in their respective fields of operation.

In discussing "A Government of Laws and not Men in a Complex World," Professor Corwin traces the growth of judicial control over the other branches of government. The solemn mummery by which the courts have sought to conceal the essentially legislative nature of the judicial review of legislation is effectively exposed. This growth of judicial power has passed through three general phases. Down to the death of Marshall, the Court was concerned in interpreting the Constitution as a document, reconstructing the intentions of the framers, and

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relying heavily upon the *Federalist*. From 1835 to 1910 (the death of Justice Brewer), the Court was dominated by constitutional theories, such as dual federalism, the police power, due process of law, freedom of contract, and the like. This prolific crop of constitutional doctrines became embedded in the precedents, so that in the present, or third, phase of judicial power the Court finds itself equipped with a theory to support practically any result it wishes to reach and we live, therefore, under a régime of judicial review pure and simple. This is true so far as the legislature is concerned. But a different development has transpired with respect to the judicial scrutiny of executive power. Veering away from the early concepts of executive power as a closely circumscribed necessary evil, the Court has come to recognize a wide field of inherent executive power beyond the reach of Congress or the Court. A theory of presidential independence in interpreting his constitutional power which was decried when Jackson announced it and acted upon it, and which Mr. Taft deplored when Theodore Roosevelt pictured the President as the "steward of the people," has now, mainly because of Chief Justice Taft's efforts in the Myers Case, become, in large measure, the doctrine of the Court. It may be noted, however, that Professor Corwin's view that we have reached the point where legislative power may be delegated to the President when it is a "necessary and proper" way to exercise legislative power was not followed by the Court in the recent "Hot-Oil" Cases.

A final and shorter chapter deals with "The Breakdown of Constitutional Limitations—The Spending Power." In spite of the conscientious scruples of early presidents and congresses, there has emerged the doctrine that the spending power of Congress is not limited to the fields of delegated federal power, but may be exercised by Congress in its discretion for any purposes whatsoever. Nor is there any judicial curb upon the exercise by Congress of jurisdiction and control over the things on which it spends money. We therefore face a situation in which direct national control over industry and commerce is hedged about by limitations which seem frequently rather artificial in view of the nationalization of the country's economic life, but in which there are no discernible restrictions upon the extent to which the federal government may buy the right, under its power of appropriating money, to enter these same fields of enterprise as a competitor.

There is a brief résumé at the end of the volume. It seems clear from Professor Corwin's analysis that by thriftily providing itself with sets of "double answers" to all important constitutional questions the Court has placed itself in a position of dominating control over national social policy when that policy takes the form of legislation, although that control is negative and not positive. This position he feels the Court

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should voluntarily abdicate, at least in large measure, by adopting rules of interpretation which give freer play to national legislative discretion. At the same time, the Court has built up with reference to the executive power and the spending power a freedom from judicial restraint which explains (but hardly justifies) the title of the volume, *The Twilight of the Supreme Court.*

Professor Corwin loves an argument and will take on all comers. He is a ruthless Hamiltonian nationalist, and he is unbunkoed and unterrified by the judicial incantations which obscure the realities of the judicial process. There is a fighting flavor to his writing. His exposition is lucid, his logic compelling, and his style, in spite of its extreme compression, altogether delightful. A wealth of material has been crowded into the notes segregated at the end of the volume. This little book is of value out of all proportion to its size, and we await impatiently its expansion by the author into a detailed and comprehensive study of American constitutional theory.

ROBERT E. CUSHMAN.

Cornell University.

Principles of Legislative Organization and Administration. BY W. F. WILLOUGHBY. (Washington: The Brookings Institution. 1934. Pp. xiv, 657.)

Much praise is to be given to this useful book. Particularly is this true of its description of the organization and procedure of our national House of Representatives, which is taken as typical of American legislative bodies. Accuracy is the rule, and such misunderstandings as appear are surprisingly few when compared with those of most writers who have discussed our lawmaking bodies from the outside, without the aid that comes from membership.

Only one misapprehension is important enough to call for comment. It concerns the question of leadership as that stands today, a quarter of a century after the revolt against one-man domination. The heart of that revolt was its purpose to take from the Speaker control of the program of the House, that is, determination of what bills should be considered. Only the change relating to petty business is now of practical importance. The Committee on Rules almost invariably determines the precedence of the big measures other than the appropriation and revenue bills, which as always have the right of way. To be sure, the Speaker does not now officially share in decisions of that committee, but he is one of the three men who in effect control the program; for leadership, once that of a dictator, is now that of a triumvirate, made up of the Speaker, the chairman of the Committee on Rules, and the floor leader of the majority. Very rarely does an important measure reach the floor against

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the wishes of these three men. For a decade after the revolt of 1910, they were occasionally thwarted by Calendar Wednesday, the day when committees decide what shall be considered. . . . Then the floor leader began asking more frequently for unanimous consent to supersede that day with other business, and now whole sessions pass with few if any observances of the rule.

The other salient feature of the book is that concerned with administration as a legislative function. The author's well-known interest in the administration of government and his thorough study thereof entitle his views to the greatest respect, but one who approaches them after long experience in the work of legislative bodies may venture to take issue in at least one particular. Professor Willoughby would have the legislative branch exercise "direction, supervision, and control." That this is proper work for a lawmaking body, that it would be well done by a lawmaking body, would be the judgment of very few men who have ever sat in legislature or Congress.

The reasons are conspicuous. First, lawmakers are not chosen because of administrative experience or capacity. Secondly, they have not the time to supervise and control. Thirdly, their supervision and control would inevitably be tainted by partisanship, with political advantage or personal prestige too often in mind. That is why Professor Willoughby would get scant sympathy from experienced observers for his approval of special investigations. Their partiality, their venom, their browbeating of witnesses, their ignoring of the rules of evidence, their lust for publicity, their reckless rape of reputations, make the judicious grieve.

Congress tried to meet the situation when it passed the Budget and Accounting Bill in 1921. Some of us then urged provision for effective supervision. The supporters of the bill sought it by directing the Comptroller-General to investigate not only the receipt and disbursement of public funds, but also their "application." He was to make reports thereof to Congress, with "recommendations looking to greater economy or efficiency in public expenditure." The result has been insignificant. So also has been that of consolidating the House committees on department expenditures.

Some day, Congress and the legislatures will wake up to the crying need for real supervision and control. Whether it be by an agency of Congress or legislature, president or governor, or by a constitutionally created fourth branch of government, is of smaller consequence. The prime demand is that administration be somehow organized. Then with the help of the efficiency expert we will get our money's worth. Then will such labors as those of Professor Willoughby bear precious fruit.

ROBERT LUCE.

Washington, D. C.

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Better Government Personnel; Report of the Commission of Inquiry on Public Service Personnel. (New York: McGraw-Hill Book Company. 1935. Pp. x, 182.)

In this volume are presented the conclusions and recommendations of the Commission of Inquiry on Public Service Personnel, composed of L. D. Coffman, Louis Brownlow, Ralph Budd, Arthur L. Day, and Charles E. Merriam, with Luther Gulick as secretary and director of research. It is based on hearings held in different parts of the United States, in Ottawa, and in London, on special inquiries made by staff investigators, and on the judgments of the commission members. The recommendations are summarized in seven pages. These are supported by seventy-two pages of facts, opinions, and arguments. In an appendix are embraced statistical tables on public employments and digests of federal and state laws dealing with civil service.

From the first page to the last, it is evident that the Commission took no narrow view of its responsibilities. It did not confine its attention to the mere data of existing public service occupations, classifications, salaries, appointing, promoting, and removing methods, and other rules, events, and practices coming under the head of public service personnel. On the contrary, the Commission sought to look all around and through its object of attention and consideration. Nor did it evade the moral responsibility of declaring its fundamental convictions.

In telling language, it has swept away a whole flock of slogans, clichés, and escape-formulas employed by superficial thinkers in treating of government as if it were a meaningless, hateful thing that came into being somehow, and now interferes with farmers, business men, and labor leaders in making a perfect and prosperous world while pursuing their several interests under the "invisible hand" which makes all things work together for the greater glory of God. The Commission repudiates the doctrines that the spoils belong to the victor, that anybody can hold any public office, that charity begins on the pay-roll, that patronage is the price of democracy, that the best public servant is the worst one, that tenure is the cure of spoils, that home-town boys should have the jobs, and that public service is always less capable and efficient than private enterprise. It affirms the conviction that government is an important and necessary branch of our economy and culture, and that the future of American civilization hangs on competent public personnel as well as on ability, leadership, and intelligence in other fields. This conception of government and public service is not wholly novel, as the Commission members would be the first to admit, but it is encouraging to have the frame of reference stated with such firmness and emphasis by men whose names carry weight in America.

Having taken the broad view and clarified their purposes, the com-

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missioners come down to cases. A career service should be established in all governmental units. It must include all non-political positions. It should be subdivided in general groupings, not too sharply. Admission should be based on wide education, not narrow specialism. It should be geared into school, college, and university training, and institutions of learning should explore and assume their responsibilities in this connection. The service should be surrounded by the conditions of promotion, control, and rewards conducive to giving strength, dignity, and prestige to public employments. Coöperation must be promoted between federal, state, and local services and personnel agencies. Mere civil service legislation is not enough; many changes must be made in the forms and institutions of government before administration can be made to function smoothly and efficiently.

The Commission is not content with generalities. It descends into specifications and indicates how ends may be attained. And additional volumes are to go deeper into the details of program and accomplishment.

From the foregoing paragraphs, meager as they are, it must be apparent that this volume is one of the landmarks in the history of American thought about government. It is a ringing proclamation to students, professors, editors, practitioners, hard-headed persons, and everyone else who pretends to be interested in public affairs. And it comes at a time when many are wondering on what terms and conditions government and economy can be righted, if at all, and with what consequences for the values cherished in contemporary life.

CHARLES A. BEARD.

New Milford, Conn.

Administrative Legislation and Adjudication. By FREDERICK F. BLACHLY AND MIRIAM E. OATMAN. (Washington: The Brookings Institution. 1934. Pp. xv, 296.)

The authors of *The Government and Administration of Germany* have given us their long-awaited analysis of the central problems of American administrative law. Roughly one-third of the study deals with what the authors call "sub-legislation," while the principal portion of the book examines the judicial characteristics of administrative action and suggests reforms which the authors consider necessary and desirable. The basic conclusions reached correspond rather closely to those advocated in the report of the Special Committee on Administrative Law of the American Bar Association (1933).

Blachly and Oatman have pulled together and have dealt comprehensively with a great conglomeration of articles and monographs relating to special phases of the subject. Their examination is confined to the federal government alone, and hence does not deal with the corresponding de-

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velopments, such as the powers of public utility and industrial accident commissions, in the several states. In addition to its thorough treatment of an important and difficult subject, the book makes a distinct contribution because of its systematic classifications of the subject-matter of the field, its employment of a precise terminology, and its advocacy of concrete measures which would simplify and render more consistent administrative procedures and the separation-of-power theory.

There are in the United States today, in the federal government alone, nearly 600 agencies which exercise the "function of making rules and regulations affecting the lives and property of individuals, and operating to all intents as a part of the law of the land." No exact figures are furnished relative to the output of sub-legislation. After dealing with the advantages and disadvantages of auxiliary legislation, the authors advocate reforms designed to achieve greater uniformity and publicity. Among other proposals, they suggest the promulgation of all rules and regulations by a special bureau responsible to the President and the required publication of sub-legislation in an official gazette.

The authors find that there are approximately sixty federal agencies which have powers of "administrative adjudication." In this number are included such general administrative services as the Civil Service Commission and the Comptroller-General, but the largest proportion is accounted for by the regulatory tribunals and the "legislative" courts. The reviewer found particularly interesting and instructive the discussions dealing with the procedure, rules of evidence, and methods of enforcement employed by administrative tribunals. The chapter devoted to the shortcomings of the extraordinary legal remedies is also a timely and critical analysis of an aspect of administrative law which has heretofore received insufficient attention. After an examination of the advantages and disadvantages of administrative adjudication, the authors propose concrete remedial measures, the principal one being the establishment of an independent administrative court system.

Blachly and Oatman's analysis, classification, and recommendations are likely to be more satisfying to the lawyer than to the student of governmental administration. The authors' highest *desideratum*, apparently, is "the development and harmonizing of administrative law" (p. 215). "No true system of administrative law can develop," they say, "so long as it continues to grow up as the confused result of innumerable decisions of various administrative authorities established at different times to carry out different kinds of functions" (p. 215). But what is meant by "true" administrative law—the Droit Administratif? Are there not vast differences between the history and purposes of the administrative tribunals analyzed in this book and the administrative courts of the Continent? The desire for legal symmetry is apparently rated so highly that the ad-

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ministrative requirements controlling the effective execution of social legislation are given scant consideration. The reviewer also felt unconvinced by the authors' assumption that certain acts are "truly" legislative, judicial, or administrative. Administration is a composite frequently possessing quasi-legislative and quasi-judicial characteristics; detach or minimize these procedural powers and government cannot possibly meet present-day social requirements.

From the analytical, classificatory, and public law standpoints, the present book is admirable; from the administrative and social viewpoints, there is room for disappointment and disagreement.

MARSHALL E. DIMOCK.

University of Chicago.

Political Power. By CHARLES E. MERRIAM. (New York: McGraw-Hill Book Company. 1934. Pp. vii, 331.)

In this book Professor Merriam analyzes the nature of political power in a new and arresting manner which is at once illuminating and provocative. There is a whole literature devoted to the discussion of political power from various angles, but I know of no work which even remotely resembles this in method or outlook. The author is not concerned with the ethics, the juridical validity, or the political justification of the means adopted by men to acquire governmental dominance over their fellows. He is interested rather in making a realistic dissection of the dynamic processes by which that power is gained, held, and lost. Mr. Merriam would thus be in the tradition of Machiavelli rather than that of Plato were it not for the fact that scattered through his text are frequent expressions of benevolence toward his fellow-creatures and formulations of ideal objectives which indicate unmistakably that he is on the side of the angels.

The discussion commences with a chapter on the birth of power, which the author suggests is due to such factors as the need of keeping unstable situations in equilibrium, the thirst of ambitious or capable individuals for ruling the mass, the demand for an adjustment of diverse and conflicting types of human personality in a more or less harmonious manner. Next comes an analysis of "the family of power," wherein the various institutions through which power is organized or exercised are examined. These include not only political organs in the ordinary sense, but the church, the family, the business corporation, the labor union, etc. This is followed by a chapter entitled "Law Among the Outlaws," in which the author demonstrates the essential adherence to law and order of even those who superficially seem to be in open rebellion against legal authority. The outlaw, it seems, is often *plus loyaliste que le loi*.

Mr. Merriam then proceeds to analyze the various devices, symbolic and materialistic, by which the holders of power maintain their hold over

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the governed—a fascinating excursion into the region of what he calls the *credenda* and *miranda* of power, which brings to mind Bagehot's celebrated distinction between the "dignified" and the "efficient" parts of the British constitution. The succeeding five chapters, dealing mainly with the more pathological or degenerative aspects of the power process are too complicated and subtle to be described briefly. We may therefore turn to the concluding section.

Professor Merriam's chief contention is that the traditional methods of exercising power are in the melting pot, and that entirely new techniques of control may be expected to emerge. Indeed, not only the methods by which it is attained, but the very nature of political power, is in his view in process of transformation. Science and creative intelligence will replace the older instruments of authority. "Control passes from the realm of tradition and force to the realm of constructive intelligence. This is the greatest of all the emerging trends in the organization of authority."

It will be seen that the book is written in a spirit of optimism which does not regard the revolt against reason and the adulation of force manifested in Nazi Germany and Fascist Italy as likely to endure. Nevertheless, the author fully recognizes that at present many obsolete or obsolescent implements and attitudes continue to hold sway. As these pass away, they will be replaced by entirely new institutions and relationships. The main features of these will be: first, a juridical order in which all disputes between political groups will be subject to judicial settlement, and second, an economic order in which production will be systematized and stabilized. These factors will yield a basic unity for society in which multitudinous and diverse forms of group life can function freely. Wealth and arms are likely to recede in importance and civic education, propaganda, organization, morale, come to the front.

Professor Merriam has been at pains to present an argument of universal validity; and this sometimes gives his remarks a certain vague and elusive quality which is not altogether satisfying. The reader will find himself continually seeking to give exact content to the author's generalizations or testing his conclusions by applying them to particular situations. This is assuredly not a book for the indolent reader! A more substantial criticism is the somewhat cursory treatment accorded the economic foundations of political power. The interactions between economic and political life at all stages of human history would seem to call for more than casual mention. But in general the book is of outstanding importance and originality. Contributions of this order to political theory are rare on either side of the Atlantic.

WILLIAM A. ROBSON.

London School of Economics and Political Science.

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A Guide to Modern Politics. By G. D. H. Cole and Margaret Cole. (New York: Alfred A. Knopf. 1934. Pp. ix, 454.)

After having written an encyclopedic review of Europe today for the benefit of the "intelligent man," the authors have embarked in the present book on an even more ambitious task: to give a guide to world politics for the same category of readers. What the authors understand by world politics differs radically from the conception to which most of the writers of textbooks adhere. They are keenly aware of the fact that the old methods of teaching politics are sorely inadequate for the appropriate education of the present generation. The two generations before the War lived in a comparatively stable world, with the expectancy of a certain permanence of political institutions, and believing that the more backward peoples would imitate the patterns of the great Western democracies. Animated by this conviction, their treatment of political problems was rather static and juristic. They gave a kind of comparative anatomy of political institutions as the expression of the fundamental political reality.

The vehement social, economic, and political changes which took place in many countries after the War convinced every more careful student of politics that for the real understanding of those momentous changes the dissection of constitutional documents, or their official explanations, is of relatively small importance, whereas the comprehension of those forces which worked in the establishment of the new political equilibrium is of paramount significance. Constitutional lawyers by profession may continue, and should continue, their former juristic method. But for the general citizen, striving for a solid grasp of contemporary problems, a political physiology based on an understanding of the dynamic tendencies of national and international affairs is needed.

The necessity for this task was clearly felt by Mr. and Mrs. Cole. After describing the political systems of Great Britain, France, the United States, Italy, Germany, Soviet Russia, Turkey, Japan, China, and British India, they embark on certain generalizations concerning the political machine, the functioning of the states in theory and practice, and on the basic political principles of society. Everyone will acknowledge their vast erudition in many fields of their inquiry, the perspicacity of their judgment, and their deeply human, not bookish or purely technical, contact with those problems which will determine the future of mankind. The reviewer is also convinced that such a presentation of world problems as the authors make in their book is an incomparably better stimulant for youthful minds in the study of politics than purely historical or constitutional exegesis of the existing legal frameworks.

Even if all this is heartily acknowledged, one must say that no individual author, nor two authors, can embrace such a field with an equal

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competency in the various branches of the inquiry. A really dynamic politics can only be the work of many individuals who have had a living contact with the problems, institutions, and personalities which, and whom, they describe. Machiavelli could never have analyzed a French or Russian prince with the same truthfulness with which he pictured his native Italian prince. In the present book, one clearly feels which parts are based on personal experiences, which were lived through, and which were excerpted from books and periodicals. Furthermore, it is not clear on what principle the selection of the various countries treated by the authors was made. Is, for instance, the Danube basin not more full of future possibilities than Turkey? Also, the inclusion of many theoretical and future issues, the mixture of what is with what ought to be, sometimes obscures the picture, and detracts from the thoroughness of the analysis. Some chapters of Constantin Frantz, or Rudolf Kjellen, for instance, go deeper in the application of the dynamic method of politics than the present authors. Of course, the difficulties of the past generation were far smaller than those which Mr. and Mrs. Cole faced, which could be surmounted only by the purposive coöperation of many congenial workers.

OSCAR JÁSZI.

Oberlin College.

Natural Law and the Theory of Society, 1500 to 1800. By OTTO GIERKE. Translated with an introduction by Ernest Barker. (Cambridge: At the University Press. New York: The Macmillan Company. 1934. Two volumes. Pp. xci, 226, 423.)

Since Maitland translated a short section of *Das deutsche Genossenschaftsrecht*, American and English scholars have recognized Gierke's significance, but have done little to make his historical work accessible or his theory intelligible. Professor Barker has now continued Maitland's work by translating a section of the fourth volume of *Das Genossenschaftsrecht*, covering the development of natural-law theory from 1500 to 1800.

Professor Barker's introduction includes an excellent discussion of Gierke's place in the history of political thought, which is well supplemented by a lecture by Troeltsch on "Natural Law and Humanity," printed in the appendix. Barker's discussion of Gierke's own theory, essential to an understanding of his historical work, is perhaps less satisfying. He explains how Gierke's insistence upon the potential real personality of all associations tends to bring all, including the state, to the same level. He points out, however, that, as Gierke's state tends always to dominate the picture, Gierke's position is far from that of the "pluralist." Gierke's theory, emphasizing organic integration, may lead

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"towards that very doctrine of the absolute state from which it is supposed to be our rescue" (p. lxxxiv). Unfortunately, Professor Barker does not discuss the exact relation of Gierke's state to lesser associations (a difficult point in Gierke's writings), nor the significance of Gierke's theory of the origin of law and his concept of social law as distinct from public or state law. These last two points are suggested in an appendix of a few pages from Gierke's *Johannes Althusius*, but they are developed at length in *Die Grundbegriffe des Staatsrechts*, which Barker does not mention.

Professor Barker concludes with a statement of his own conception of group-personality—an attempted mean between Gierke's organic conception and the concession and fiction theories. By distinguishing between moral, psychological, and legal personality, and by defining legal personality simply as the legally recognized capacity to act in the realm of law, Barker avoids the difficulties of the fiction theory. "Legal personality" is conceded, but it is not a fiction, for it does not pretend that its bearer has moral or psychological personality. Barker combats the organic theory less successfully when he denies moral and psychological personality to the group. Moral personality—the capacity of self-determination in accordance with moral principles and of incurring moral responsibility—is denied to the group apparently only because to grant it would be "a dangerous doctrine." In contrast to the indeterminate power of purpose of the individual psychological person, Barker proposes determinate purpose as the essence of the unity of the group and the bearer, therefore, of legal personality. But, since he recognizes that the individual is not entirely self-determining and that the group, if it is to live, must constantly refashion its purpose, he is forced to admit that this distinction is not absolute, but a difference of degree. In the case of the state, whose "determinate purpose" he conceives to be no more determinate than "law," this difference of degree seems very slight and Barker's theory would seem to be no more successful than Gierke's in rescuing us from "the doctrine of the absolute state"—especially as Barker does not appear to accept Gierke's conception of law as a system of norms external to the state.

The significance of the section translated need not be argued. The recent revival of interest in the theory of natural law makes this masterly summary of its development as timely today as it was when first written. Gierke himself, while deprecating the individualism of the natural-law theory, believed "that 'positivism' should somehow learn to preserve for the idea of Law that original and independent title to existence which was vindicated for it by the School of Natural Law" (p. 226).

Like all of *Das Genossenschaftsrecht*, this section is but a summary for which the detailed evidence is to be found in Gierke's elaborate notes.

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These, supplemented by the translator, fill a separate volume of the present book. Annotated and indexed, they form a valuable bibliography for the period.

JOHN D. LEWIS.

University of Wisconsin.

Deutscher Sozialismus. By WERNER SOMBART. (Berlin-Charlottenburg: Buchholz und Weisswange. 1934. Pp. xvi, 347.)

It is seldom that a work as significant as this is met with in any language, and its importance will no doubt make an early appearance in a translated edition inevitable. Those who have followed the mass of literature dealing with political problems will find on a careful reading of this book a satisfaction similar to what one might expect of a musician, living in this jazz age, on discovering an unknown sonata by Beethoven. And for the same reason: timely and satisfying and dealing with permanent values. That this was the intention of the distinguished German economist—who now gives us his view of politics—is evident from his own words; for "to all intents and purposes, it might have been written ten or fifteen years ago, and it will—I fear—still be vital thirty years hence, perhaps even more so than now. It is not a book merely for a day, because I have deliberately refrained from direct reference to the policies of our own government." The author has viewed "the problems of the time" from a distance, so to speak, "because a consistent view of the various social problems is possible only at a certain distance from the politics of the day." The reviewer will add, what Professor Sombart might justly have claimed, namely, that, though dealing with Germany, what he says applies with equal force to England and the other West-European states as well as to America.

Primarily, it is, indeed, Germany that the author has in mind, though one might question whether it is not rather what German Socialism ought to be than what it actually is. This, however, does not lessen its value, and at many points, which are extremely interesting, German characteristics and German psychology are revealed as something distinct and something which enables the American reader better to understand the German temper. For example: "In what other country [than Germany] would the leading statesman have given the disastrous turn to the "scrap of paper" which was given by Bethmann-Hollweg? Again: "The Germans are (aside from small nations) the only people who always have an open mind for values, and which for that reason all too often injures them, in so far as foreign influence is allowed to occupy too large a place in their lives and which, in their admiration for things foreign, causes them to forget the development of their own culture."

This book is too full of leading ideas to enable them to be given in a

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brief outline, but the main heads are: "The Economic Age," in which the author describes the crash and change in the old forms of life and the attempts at transformation to meet the demands of the new age; "What is Socialism?," under which he finds not 57 but 187 varieties; "Marxism," in which he points out its errors and failures and debunks Communism; "German Socialism," its meaning, ways, and aims; "The State," its nature, population, the race question and its solution, nationalism, state and society, and how to win the individual for the state; "Economics," its technic, the fundamental principles of a well-ordered economy, and the problem of private property. The mention of these topics does not do justice to the contents, but it may suggest the scope of the book.

Among striking features which may be mentioned with a view to giving the reader some impression of the mind of the author and the range of interests dealt with, perhaps the most interesting is the graphic description of the economic age which erected a tower of Babel that came crashing about our ears when the world crisis came. But the moralist may also find comfort in the fact that here is a renounced economist who believes that the greatest blow that ever struck mankind was the loss of belief in God, which cut men off from all transcendental relations. What this meant, he describes in an eloquent passage: "If we summarize all this, we must express it in the formidable sentence: The life of mankind has become meaningless. Cut off from transcendental relations, cut off from directive ideals, man has recoiled into himself, has sought the realization of his ideas and found them not. Through the severance of these relations, man oscillates within himself, surrounded by an unending void. In all his struggles to find the meaning of life, he is continually met with an iron breath of senselessness which drives him into silence and cold."

German Socialism is defined "negatively as nothing else than a departure from the economic age in its entirety." Stated positively, it is an attempt to seek spiritual values. Whether one agrees with Sombart or not, one must admit that his book is the work of a great scholar, a brilliant writer, and a man of fertile ideas. The volume is well documented and—an unusual thing for a German work—it has a very complete index.

KARL F. GEISER.

Oberlin College.

Tracts on Liberty in the Puritan Revolution, 1638–1647. EDITED, WITH A COMMENTARY, BY WILLIAM HALLER. (New York: Columbia University Press. 1934. Three volumes. Pp. xiv, 197, 339, 405.)

No part of the history of political thought is more important or more fascinating than the brief period which lies between the first meet-

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ing of the Long Parliament in 1640 and the execution of Charles I. The first whisper of any anti-monarchical sentiment that Clarendon could remember in England was in Henry Martyn's words spoken to him in 1641; yet within a scant half-dozen years almost every conceivable form of government, secular and ecclesiastical, had been advocated and condemned in a pamphlet literature which probably has no parallel in history. The Thomason Collection in the British Museum contains some twenty-three thousand of these pamphlets, the greater part of them dated between 1640 and 1649. Few revolutions in political thought have been more rapid, few are more instructive, and for no other have we such a contemporary record. In these pamphlets, carefully dated by George Thomason, we are able to trace the sweep of English revolutionary thought month by month and almost day by day.

From this mass, Professor Haller has selected seventeen for reproduction in facsimile, under the general title of *Tracts of Liberty*. The choice must have been difficult, but it is on the whole a very judicious one. All of the tracts except an early one by Lilburne fall between 1641 and 1647—two by John Goodwin and two by Richard Overton, three in all by John Lilburne, four ascribed by Professor Haller to William Walwyn, and one each by Lord Brooke, Henry Parker, Thomas Goodwin, and Henry Robinson.

Except possibly for Lord Brooke's early *Discourse* on episcopacy and Henry Parker's *Observations*, all are the work of men who were already independents and republicans or democrats. John and Thomas Goodwin were clergymen violently opposed to prelaty and presbytery alike, and the former a champion of the completest religious liberty. Parker was probably the ablest lawyer defending the two houses against the king in the controversy over the militia in 1642. Henry Robinson was a merchant educated at Oxford who wrote important and still valuable pamphlets on trade and law reform, as well as the powerful tract on *Liberty of Conscience* reproduced here. Lilburne was the most active political agitator of his day and probably the chief proponent of a democratic constitution for England.

Two of these three volumes are occupied by the facsimiles. In the first, Professor Haller has written a "commentary" of somewhat more than one hundred pages, followed by a rather inadequate bibliography and by explanatory notes and an index.

In the text it was undoubtedly wise to confine the selection, as has been done, to these important and now scarce pamphlets of independents and republicans. These men were for the most part radicals in church and state, and their writings were among the most powerful and influential contributions ever made to the movement toward religious and political liberty. The commentary, however, exceedingly valuable and

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thorough though it is in placing these tracts in their proper perspective and in marking the course of intellectual and political freedom which they illustrate, seems unduly to neglect and occasionally to under-rate the contributions made to the same end by moderate men who were unable to be either independents or republicans; men who, though they remained in the church established, and believed in monarchy, were often among the severest of the critics of the abuses existing in each. Hales, Chillingworth, Jeremy Taylor, Selden, Falkland, Troysden, and others like them made contributions to toleration and liberty no less influential perhaps than John Goodwin; and Goodwin himself in his toleration goes only a little beyond the *Stratagemmata Satanae* of Jacobus Acoutius which he translated in 1648, published originally in 1565. William Prynne himself, though narrow, pedantic, and subject to gusts of emotion, was a fairly consistent opponent of arbitrary government throughout his long life. The black-letter lawyer does not quite belong with Cheynell and "shallow Edwards," even if he was at times associated with them in opposition to independency.

On the constitutional side, the same tendency to ignore, or even to decry, the moderate is evident in the comments. For example, Philip Hunton's anticipation of Locke's right of revolution is represented as a "logical difficulty," "exploded" by Filmer, which works havoc with his own theory of monarchy. In this, Professor Haller is probably only following the traditional view, but a careful study of Hunton's *Treatise of Monarchy* does not substantiate it.

In general, the commentary shows a somewhat greater familiarity with the literary and intellectual development of the time than with the constitutional, and it is this probably which makes its discussion of Henry Parker's *Observations* the least adequate part of the introduction. Parker was a lawyer and should probably be termed a monarchist, and his tract dealt wholly with the issue of 1642 regarding the militia. It is therefore much more constitutional and much less extreme than most of the writings of later years, such as those of Lilburne given here. These differences in time and temper are not sufficiently brought out.

The editor's chief contribution is in his just and admirable estimate of Lilburne and Walwyn, which will be indispensable to all serious students of this important period. For Walwyn this is particularly true, and this commentary should do much to arouse interest in a man whose contributions to liberty have been too much neglected.

Most of the polemics—even some of the most important—in these eventful years between 1640 and 1647 are now inaccessible to all but a few, and yet no adequate understanding of the Puritan Revolution is possible without them. These facts are the measure of the value to students of political and intellectual history of this well-chosen collection

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and of the lucid commentary in which the editor has succeeded in supplying the context necessary to make it intelligible.

C. H. McIlwain.

Harvard University.

Moscow Dialogues: Discussions on Red Philosophy. By Julius F. Hecker. (New York: John Wiley and Sons. 1934. Pp. xvi, 283.)

Religion and Communism; A Study of Religion and Atheism in Soviet Russia. By Julius F. Hecker. (New York: John Wiley and Sons. 1934. Pp. xii, 303.)

Russian Sociology; A Contribution to the History of Sociological Thought and Theory. By Julius F. Hecker. (New York: John Wiley and Sons. 1934. Pp. xvi, 313.)

These three volumes present Communist theory (and some practice) as a huge body of correlated doctrines in evolution, making available for the first time in English a study of Communist thought which is at once comprehensive, scholarly, and clear. Dr. Hecker, a Russian by birth, spent many years in America. He returned to Russia on famine relief work in 1921, and remained there to become a professor of philosophy in Moscow. With empirical knowledge of both American and Soviet Russia, acquired over extended periods, and an erudition which commands respect, he is peculiarly fitted for the task of explaining on a scale hitherto unattempted the whys and wherefores of Communist aims and activities. This he accomplishes with the even temper of a scholar who, mellowed by years of research, at long last draws positive conclusions from materials and experience. His good faith is patent. He tries to expose rather than convince. The over-all result of this moderation, rare to the subject, may be described as the most plausible case for Communist theory thus far offered to the American public.

The three volumes give not only Communism in essence, but also a panorama of Russian character in its historical development, what was and is, along with why it was and is. The reader is thus enabled to focus on the close connection between social development and philosophy, religion, and sociology, in which the contradictions reflect the baffling contradictions of the basic Russian character, the peasant, who is at once practical and a dreamer, religious and non-religious, shrewdly self-interested and yet more socially minded than any basic stock anywhere. For this large contribution to an understanding of Soviet Russia, Dr. Hecker merits the gratitude of enlightened American scholarship.

Moscow Dialogues, more popular in style than the other two works, concerns the development and present problems of Communist philosophy. The Platonic medium, suggested to the author by his many contacts with leader-conducted groups of vistors, is an admirable device to

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expose the answers of the Communists to the many assaults on their doctrines. The spokesman is aptly named Socratov, who proves to be a well-mannered and learned gadfly to the capitalist horse. The types chosen, all American except an English bishop, include a professor, a humanist, a rotarian, a reformist, a senator, and a banker, with shades of political creed from left to right in that order. Through twenty dialogues, the story of revolutionary philosophy unfolds, from sources in Kant, Hegel, and Feuerbach, to Marx, Engels, and dialectic materialism, on to Leninism and the various schisms amongst the Communist philosophers of more recent date. The last five dialogues deal with religion, art, education, and world revolution. In the Epilogue, the scene shifts to America, where, as a result of the Moscow experience, the professor attempts to teach dialectic materialism and is "fired" from his university, and the senator campaigns for election as governor on a platform of Red menace.

In *Religion and Communism*, the author reviews the development of religious and anti-religious philosophy in Russia, tying in the foreign influences of past centuries, and leading up to the Communist theory of religion in the war on the Church. Dr. Hecker raises the question: "Is civilized humanity in need of religion?" His answer, in the final chapter, is qualitative: "If there is a God in the universe, men will continue to seek and worship Him; if there is none, this greatest of human illusions will be exposed in the Communist social order, which, for the first time in history, is organizing its life on the hypothesis that there is no God." His thesis is that religion can disappear only when conditions which feed and create it disappear, namely, the fears, crises, etc, of class-stratified society. But even then the mysterious meaning of life will remain unless sublimated in some emotional stimuli other than religion. Atheist ideology he finds too rationalist, an emotional vacuum unsuited to human nature. Thus far the Communist system has developed nothing which could fully replace the pastoral care of the Church. Therefore, some institution must take up the functions of the Church, providing emotional outlet, inspiration, and personal care. There is need for a message to enrich the social message of Communism with emotional and ethical values, some institution differing from both religion and atheism, and centering on the good life in the new social order. That might come through *rediscovery* of Jesus, but whether as the martyred prophet, the poet and friend of little children, or *logos* manifested, who can tell? In saying that the mystery of the cross may never be solved, Dr. Hecker obviously departs from the "general line" of the Communist party. A helpful addition to this volume is an appendix containing all of the important party and governmental decisions regarding religion.

Finally, in *Russian Sociology*, the latest volume from his pen, Dr.

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Hecker presents a well documented purview of the contributions to sociology by Russian thinkers, telescoping into concise summaries whole schools of thought, the apologists for autocracy, the Westernizers, the Slavophiles, the Marxists and Revisionists, and finally the Lenin-Stalin interpretation. One chapter is devoted to a criticism of Professor P. A. Sorokin, the noted sociologist now at Harvard. In summing up Communist sociology, he writes: "Russia will demonstrate on an unprecedented large scale whether society can be scientifically developed and directed toward a conscious end . . . Communist sociology has grown, through the direction given it by the genius of Lenin, into a magnificent science of social planning, a science which is still in its infancy, but which has all the promise of delivering humanity from the anarchist chaos into which the capitalist system of production placed it." The classified bibliography and the documentation of the text make this volume of special value to scholars.

While there is a certain unavoidable overlapping in these three volumes, taken together they make a fairly complete picture. All three have indices. Read in the order in which they are here reviewed, they represent a chronological unfolding of Dr. Hecker's conclusions.

BRUCE HOPPER.

Harvard University.

American Diplomacy During the World War. BY CHARLES SEYMOUR. (Baltimore: The Johns Hopkins Press. 1934. Pp. xii, 417.)

The publication of a growing amount of literature dealing with the United States and the World War has made possible the volume which Professor Seymour has written. Its purpose is to study the processes by which President Wilson gradually brought the United States into an essentially European conflict and how he attempted—in a measure successfully—to dictate the terms of a peace settlement.

In careful but illuminating chapters, the author reviews the allied interferences with American trade, on the one hand, and the German submarine activities on the other. Both belligerents interfered with so-called neutral rights, being limited only by their fear that the United States would resort to reprisal. Professor Seymour repeats the traditional point of view that the Allied interferences with American commerce did not destroy human life, although the German submarine activities did so. He insists that "America entered the war on the side of the Allies, not so much because of political or even economic factors, as from sentimental reasons. The people of the United States were appalled by the submarine warfare." Although before 1917 the United States followed a policy of technical neutrality, it is quite clear from this account that the Wilson Administration, as well as the financial interests, were pro-British in sentiment. Nevertheless, had it not been for the decision of

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the German government to embark upon unrestricted submarine warfare, it is probable, as the author points out, that the United States would have broken with the Allies over the blockade question.

Until the fall of 1915, the United States followed a primarily defensive attitude toward the belligerents. But in October of that year the President came to believe that, as the author states, "the United States must either end the war or be compelled to enter it." Consequently, he advanced a plan for armed intervention, first suggested by Colonel House in October, 1915. Under this plan, the United States would offer to convene a peace conference, and if one of the two belligerents refused the idea the United States would intervene against it, in order to enforce peace. The purpose of the peace conference would be to establish a future world organization and to conclude a moderate treaty settlement. On February 17, Colonel House and Lord Grey actually drafted a memorandum summarizing such an offer to the Allies by the United States. The Allies, however, declined to accept this startling proposal, partly because they did not wish to accept the moderate peace terms proposed by Wilson, partly because they did not believe that President Wilson could overcome the opposition of Congress to war. Professor Seymour asks "whether the Allies were not guilty of an awful error in refusing the opportunity opened by Wilson." Many critics will ask whether the President did not make an "awful error" in advancing such a proposal in the very year in which he won an election on a no-war program.

Professor Seymour has given us a highly valuable account of the diplomacy of the United States during the World War—an account which is interesting, well-documented, and well-written. The outstanding defect of an otherwise valuable book is that it does not adequately examine the underlying motives which finally led the United States to join the Allies. Professor Seymour states that "there is no scrap of valid evidence supporting the thesis" that the United States went to war as the result of the influence of certain "interests;" we went to war because of revulsion against the submarine and because of national honor. Earlier in his volume, however, the author declares that the "allied command of the sea, on the whole, was not exercised in a way seriously to injure American pockets." Had he pursued his investigations along this line, he might have concluded that American financial and economic interests were making vast sums out of the Allies, despite the surface violation of neutral rights—sums which would have been lost had the German submarine campaign been successful. Professor Seymour has not made use of Hartley Grattan's *Why We Fought* or F. Schuyler Foster's thesis, *Studies in America's News of the European War*. Both of these works show the vast influence exercised upon American opinion by the British cables, censorship, and other forms of propaganda.

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Perhaps it is this unwillingness to probe into the foundations of political motives that explains why Professor Seymour is, in the reviewer's opinion, unjust to Secretary Bryan's point of view. If the United States could acquiesce in the extra-legal controls established by the Allies over our shipping, why could it not also acquiesce in the control which Germany proposed as a substitute for the submarine? The Germans were much more inhuman than the Allies, but the German proposal would have drastically limited American war profits. This factor may not have been predominant, but it cannot be dismissed in the cavalier fashion of the present author.

Professor Seymour concludes that "Wilson's greatness remains," because although he could not control events, he moulded them "so as to bring forth good." Others may contend that had Wilson had a deeper understanding of the forces which move nations, and had he been more willing to examine facts before he enunciated "principles," he might have kept the United States out of war and thereby prevented the imposition of the drastic terms of the Treaty of Versailles. This argument may also be unsound, but it must be examined thoroughly before the definitive work on the United States and the World War is written.

RAYMOND LESLIE BUELL.

Foreign Policy Association.

Autopsy of the Monroe Doctrine; The Strange Story of Inter-American Relations. BY GASTON NERVAL. (New York: The Macmillan Company. 1934. Pp. XI, 357.)

After reading the two volumes on the Monroe Doctrine by Professor Dexter Perkins, one would suppose that little, if anything, remained to be said on the subject, down to 1876; yet a student of the subject cannot afford to neglect this book. Señor Nerval, whose real name is Raul Diez de Medina, starts out by putting "The Monroe Doctrine on Trial," and he levels an indictment of ten counts against it, the most important of which are that it never was altruistic, that it has been vitiated by various corollaries, that it stands in the way of Pan-Americanism, and that it is in conflict with the peace machinery set up since the World War. The rest of the book is devoted to proving these counts and an appeal for the burial of the corpse to pave the way for a "New Deal in Pan-Americanism."

The book is thoroughly documented and abounds in quotations, some of which have been little used. For this, scholars should be grateful. Most of them will, I feel sure, agree that the author has worked hard to prove many things which they already knew. Now if he can convince the general public, both in the United States and in Latin America, of

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the truthfulness of his statements and officials of their usefulness in application, his work will not have been in vain.

But some will not agree that Señor Nerval's line of attack is always correct, or that all of his conclusions are valid. Following Mr. J. Reuben Clark (*Memorandum on the Monroe Doctrine*), in going back to King William's War 1689–97) for the historical background, is little short of ridiculous. If the principle of interference or helping a neighbor is to be taken as the starting point, why not go back, as Secretary Knox once did, to Hiero, tyrant of Syracuse? Señor Nerval seeks to prove that American fear of intervention by the Holy Alliance was groundless. A threat of armed intervention by any number of European powers, he says, was meaningless without Great Britain. He then proves that Great Britain was opposed to such intervention, which everybody knows, and virtually adds, although not in specific words, that the Holy Alliance never had any intention of intervention. The *non sequitur* is clearly apparent. One only needs to add that if Gallatin (1818), Castlereagh, Rush, and Canning down to October 9, 1823, thought that such a danger existed, Monroe and his cabinet may be pardoned for thinking so down to December 2. One phase of the Monroe Doctrine, non-interference in European wars and politics, is not subjected to the autopsy; hence there is no expression of sentiment as to whether this part should be buried. Madison is given no credit for the resolution adopted by Congress on January 15, 1811, foreshadowing the Monroe Doctrine, although Congress quoted some of Madison's words in asking for authority to occupy Florida. Neither did Mr. Clark give him credit.

The bibliography is excellent but leaves out some works of consequence—for example, Herbert Kraus, *Die Monroedoktrin* (1913), John B. Whitton, *La Doctrine de Monroe* (1933), and a few others in French.

DAVID Y. THOMAS.

University of Arkansas.

Government-Operated Enterprises in the Panama Canal Zone. BY MARSHALL E. DIMOCK. With an introduction by Louis Brownlow. (Chicago: University of Chicago Press. 1934. Pp. xxi, 248.)

Here we have an efficiency report on the government of the Panama Canal Zone and its appurtenances, prepared at the request of the Secretary of War. In it, one finds the conventional topics of governmental research discussed in detail, such as the possibilities of simplifying administrative set-ups, of improving personnel management, and of bettering financial controls. On the whole, the text takes the form of a series of minute descriptions of fact rather than the form of a flowing account.

This is far from being an ordinary efficiency report, however, for it throws light on a number of problems peculiar to "colonial" affairs. Mr.

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Dimock has to deal with a tropical administration in which attention must be given to the management of blacks and to the preservation of the health of white officers. An example of this colonial thread is to be found in the statement that the salaries of white employees in the Canal Zone should be sufficient to enable them to take vacations in the United States occasionally, so that they may renew their vitality in a temperate climate.

Despite its "colonial" flavor, the present volume is of value to students wrestling with problems arising in the continental United States. The Canal Zone is a great experimental laboratory for testing ideas in the field of government ownership, many of which are sufficiently applicable to the mother-country to deserve careful review. According to the author, one finds the government operating a wide variety of units in the Zone, of which the following is a partial list: a canal, a railroad, a steamship line, two hotels, coaling, oiling, and repair facilities for ships, a slaughter-house, numerous department stores, a telephone system, a bakery, an ice-plant, stables, farms, a chemical factory, and laundries.

What conclusions may one draw from the records made by these various public business-enterprises? Viewing them as a whole, Mr. Dimock feels that they meet the ordinary business standards of success. When he analyzes them in detail, however, he finds important differences in efficiency between units operating under a corporate, and those operating under a departmental, form of government. The former is represented in the Zone by the Panama Railroad Company, all the stock of which is federally owned, while the latter is represented by the regular departmentalized Canal Zone administration, coördinated with the War Department at Washington. The author points to numerous instances in which the work of the former has been superior to that of the latter, giving special significance to his treatment by inserting a chapter on "Principles Underlying Government-Owned Corporations," in which he summarizes current information on the subject in the light of his Canal experience. Reasoning from the special circumstances existing on the Isthmus, the author concludes that the corporate type of organization is best suited to the needs of the area, and suggests that a comprehensive Panama Canal Corporation be created to take over the activities of the Zone.

WILLIAM BEARD.

Stevens Institute of Technology.

New Frontiers. By HENRY A. WALLACE. (New York: Reynal and Hitchcock. 1934. Pp. vi, 314.)

This book is presented in four sections. The first, "Between Two Worlds," deals with explorers and pioneers, new rules and middle courses.

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The second, "Changing the Rules," deals with private ownership of government, personal devils, hot spots, pressure groups and news drives, the tariff, America dislikes to choose, monetary policy, cost of production in agriculture and industry, some prices don't come down, and millionaires, booms, and chaos. The third section, "The Agrarian Drive to Change the Rules," has four chapters: one on twelve long years, and the remaining three chapters on the thirteenth year, the fourteenth year, and "we tax bread and meat." The fourth section deals with "Untrod Paths" in smoothing out the cycles, putting our lands in order, the cost of continuous balance, the process of economic democracy, and beyond the frontier.

This table of contents may not tell much to the one who hasn't read the book, but after one has read the book the table of contents is as indicative of the contents of the book as almost any other table of contents might be. Ferner Nuhn is quoted with approval on the cover page of the book as saying of Mr. Wallace: "It is characteristic of him that he is a vegetarian in a state which leads in the production of hogs."

Let us now turn to some excerpts from the book. On page 50, the Secretary says, in speaking of personal devils: "The Wall Street devil got sick in 1930, and in 1933 and 1934 the Federal Government tied him down, cut off his horns, and branded him so he could no longer exercise his money power in the old-fashioned way."

Again, on pages 43 and 44: "Men experienced in government at Washington will understand by this time the extent to which certain, but not all, American corporations dealing with munitions, shipping, airplane and air mail subsidies, and oil rights, have tried and often succeeded in using their power over government for flagrantly anti-social ends. Nearly every president who has had anything to do with tariff revision has been impressed by the way great businesses rally 'round in the hope of securing governmental favors through the tariff in order to help them promote monopolies. Such legalized thievery is probably working more harm to the people of the United States than all other forms of robbery put together."

And, finally, on page 37: "In the democracy of tomorrow, the people will have to be so intelligently free from prejudice that neither the wealthy, interested in private control of government for personal ends, nor demagogues, interested in their jobs, will be able to create deception and illusion. But for many years, it is to be expected that these gentlemen with their many tricks will be trying to change the rules of the game to suit themselves."

"I find this book hastily dictated, copy-read, and very little edited." This statement by the Secretary fairly well describes the effect the book has on those who read it for accurate and scholarly information. Rhetoric

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always gets in the way of facts. The countless shortcomings of previous ages are hurtled through the book. Within a short time, no doubt, facts will be hurtling through the methods adopted by the Secretary himself with great enthusiasm to bring the farmers' income up to the standard of income set for labor and for industry. Anyone conversant with the facts will know that those writing of the future will be as critical of 1934 as Mr. Wallace has been of 1929.

CLYDE L. KING.

University of Pennsylvania.

Sun Yat-sen; His Life and Its Meaning. BY LYON SHARMAN. (New York: The John Day Company. 1934. Pp. xvii, 418.)

This valuable work is the first critical life of the "Father of the Chinese Revolution" to be published in English. It marks a substantial advance over its uncritical predecessors. The author has had access to materials which were beyond the reach of Dr. Sun's first biographers in English, Sir James Cantile and Judge Linebarger, and he has made good use of them. The volume is more comprehensive and more ambitious than Restarick's. For the period which ended with the proclamation of the Republic in 1912, this latest "Life" meets the reasonable requirements of the age and should remain the standard work for a long time. For the last thirteen years of Dr. Sun's life, it is less satisfactory. Here the author enters upon highly debatable ground and his work loses its earlier objectivity. The controversies between revolutionists and moderate reformers are still too imminent, the available materials for a definitive life too scanty, to permit as finished a biography as is possible for the earlier period. The work declines to the level of surmise, conjecture, and special pleading.

The author's point of view is stated clearly at the outset. Sun Yat-sen's thinking, he believes, is not great enough to sustain the uncritical hero-worship of revolutionary China. Since the new state-cult built around the life and thought of Dr. Sun discourages independent thinking among its followers, the lack of originality and profundity which Mr. Sharman finds in Sun's revolutionary politics seems to him a menace to the future of republican China. Believing, as the author apparently does, that the Revolution up to now has been a failure, he cannot be as hopeful of its future as he, a friend of China, would like to be. Hence the note of pessimism which seems to be the key-note of this work, in many ways so instructive for foreign readers and so constructive for Chinese.

A biography of the reflective type, such as this, suggests to the reviewer two queries. What are the marks of a great man by which he may be recognized by his contemporaries? And what are the tests of success or failure which are properly applicable to a great historical movement by those who live in its midst? Americans do not hesitate to call Washington

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and Lincoln great, though Washington was surpassed in various important respects by Hamilton and Jefferson; and Lincoln, as Beveridge has lately demonstrated, could not be rated as highly by his contemporaries as by posterity. Europeans probably will now mostly agree that the French Revolution was a success, though its principles did not clearly triumph even in France until a century had passed. It is evident that it is too soon to pass judgment upon the Chinese Revolution, and hence it is also too soon to appraise definitively the claims to greatness on the part of its leaders. But whatever may ultimately be the conclusion concerning the author's political philosophy and canons of biographical criticism—on both points the reviewer must make reservations—there can be no doubt of the importance of this work both for Western and for Chinese readers.

ARTHUR N. HOLCOMBE.

Harvard University.

Problems of the New Cuba; Report of the Commission on Cuban Affairs. EDITED BY RAYMOND L. BUELL. (New York: Foreign Policy Association. 1935. Pp. xi, 522.)

This excellent factual analysis is the result of a survey of conditions in Cuba by eleven experts in the summer of 1934. The "problems" of the new Cuba prove to be the problems of the old Cuba, many of them accentuated in the Machado régime and the economic crisis. Cuba is shown to have a population increasingly of mixed blood. The island is heavily dependent for its livelihood on sugar production, with its seasonal unemployment. Foreign capital controls the export industries. The per capita income is about ninety dollars per year. Dietary conditions are poor, shelter inadequate. The medical situation "is in about as bad a condition as can be imagined." Primary education is woefully deficient, and secondary education is no better. Social welfare problems are acute. The labor movement is poorly organized and ill-led. Economic activities of the republic have been warped into mistaken channels by the overemphasis of sugar to the sacrifice of subsistence crops.

Public finance is in somewhat better state, though it also has its problems. The money system, linked to that of the United States, is in general sound, though recent legislation has made it less so. The public debt is not burdensome under normal conditions, but items caused by the road-building program are in dispute. Public utilities are on the whole well run but over-capitalized and without adequate public control. The management of public receipts and expenditures is shot through with bad administration and corruption.

This is not a pretty picture. The conditions do not arise only from current emergencies. They are most of them of long standing, and many

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Cuban problems are common problems in the American tropics. In some respects, the Cuban is better off than his Caribbean neighbors. The per capita income, for example, is higher than that in any Latin American country north of Uruguay and Chile.

The Commission suggests fundamental reforms. Activities yielding subsistence crops should be fostered to give employment in the "dead seasons" between sugar harvests and to increase goods income. Small property holdings should be encouraged, public health services increased. Vocational training should be introduced, social welfare activities must be supported. The sugar industry must be normalized and adjusted to the sugar policy of the United States. Income, expenditures, and public debts must be better managed and public utilities better controlled.

It is recognized that this is a long-time program, expensive and primarily domestic. The activities of the United States intended to promote Cuban stability the Commission tends to believe have been unfortunate. American ambassadors should not counsel Cuban administrations. Recognition of new governments might follow Mexican practice. The United States should consider giving up its lease of Guantanamo. Use of military forces "in time of acute disorder" should be confined to evacuating foreigners. Stationing warships in Cuban waters in times of disturbance is not approved. Cubans should be left free to make their own decisions.

Still, the Commission does not feel that coöperation with foreigners should be altogether foregone. Special trade agreements with the United States are approved, and it is suggested that "a few foreign experts" be engaged to install systems of government accounting, public utility regulation, and agricultural banking. Engagement of "nutrition specialists" and "eight or ten . . . soil surveyors" is also advised. But eventually all such work would be taken over by Cubans.

The success of such a program depends on the ability of the Cubans themselves to develop an aroused public opinion and an efficient government. The local political system has heretofore "been marked by irresponsibility, unproductiveness, and corruption." "Perhaps the greatest problem is to enlist the services of the most able Cubans, who hitherto have been unwilling to descend to the political market-place, in a more direct form of service for the community and the country." To this end, it is suggested that there be created "some autonomous body, aloof from the vicissitudes of partisan politics and dominated by non-political members, to whom the task of a reconstruction program could be entrusted." One can share the hope that action of this sort will be taken, but political history in Cuba and elsewhere does not make one sanguine.

CHESTER LLOYD JONES.

University of Wisconsin.

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Declaratory Judgments. By Edwin Borchard. (Cleveland: Banks-Baldwin Law Publishing Co. 1934. Pp. xxii, 669.)

The declaratory judgment, as a judicial instrument, became naturalized in the United States only fifteen years ago. But in that short space of time more than thirty states have enacted special statutes authorizing their courts to declare the rights of parties, and more than a thousand opinions have been published by American courts of review, discussing and explaining the purpose and scope of the remedy and its application to innumerable problems.

This record is unprecedented in the history of judicial remedies. The one obstacle to the still more rapid development of the device, and to its still broader use, has been the lack of an adequate treatise on the subject. Heretofore, the literature of the declaratory judgment, outside of judicial decisions, has consisted almost entirely of law review articles. These were necessarily limited in scope and quite inaccessible to the ordinary practitioner. Now, for the first time, there has been presented to the profession a systematic and comprehensive study of the declaratory judgment in all its aspects, by a writer thoroughly familiar with the subject.

The declaratory judgment is a judgment which merely determines and declares the rights of the parties to a controversy, without ordering the recovery of any money or property, or the doing of, or refraining from, any act. No wrong need be committed or threatened. It is enough that a situation has arisen in which two or more parties find themselves involved in an actual and bona fide controversy over their opposing legal rights. In such a case, the court may merely declare what those rights are, leaving the parties to a peaceable adjustment in the light of the declaration, without the violent intervention of the sheriff and his coercive writs. Two classes of cases are clearly involved. In one, although it would be possible to bring an ordinary action for damages, or for the recovery of property, or for an injunction, or for some other conventional remedy, the plaintiff may nevertheless prefer, in the interest of harmony, not to base his application for relief upon charges of wrong-doing, but merely to ask the court to determine and declare his rights. He may have confidence that a satisfactory settlement can easily be made after the legal status of the parties has once been judicially determined.

In the other class of cases, no ordinary remedy is possible, because no wrongful act has yet been committed. What the parties desire is to ascertain their rights before it becomes necessary for either of them to act at his peril and thereby incur the risk of acting unlawfully.

It is obvious that in both classes of cases the declaratory judgment is a remedy of great value. It largely removes the appearance of hostility in ordinary cases, and makes litigation, in form at least, a friendly rather

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than a belligerent process. It gives a remedy in many cases where none is otherwise obtainable, and enables parties to enjoy the security of judicial guidance in determining their conduct.

Professor Borchard's book is a systematic exposition of the history, constitutionality, and operative utility of the declaratory judgment. He traces its development from Roman times, and describes its medieval expansion and its current use in continental Europe, its adoption in the law of Scotland, and its comparatively recent but extraordinarily vigorous growth in England.

When introduced into the United States, the remedy was subjected to the peculiar and highly technical constitutional tests which we have evolved from our theory of the separation of governmental powers. The new statutes were attacked in state after state, with monotonous regularity, always on the same ground, namely, that declaring the rights of parties was not a judicial function. The first attack, in Michigan, succeeded. Every other attack failed. The Michigan court finally made the decisions unanimous by reversing its first position. This interesting exhibition of legalistic acrobatics is fully discussed by Professor Borchard, with special emphasis upon the part played by the United States Supreme Court, through various *obiter dicta*, in throwing obstacles in the way of the adoption of the new remedy in the federal courts. It has only been within a little more than a year that this tribunal has acknowledged the declaratory judgment as a valid judicial instrument.

The main portion of Professor Borchard's book is devoted, as it should be, to an analysis and exposition of the situation in which the declaratory judgment has been held to be an appropriate remedy. Cases have been classified in two ways. First, he has marshalled the decisions in which declaratory judgments have been rendered to give relief against peril and insecurity and to confirm judicially and recognize the validity of rights subject to future, but not present, impairment. Second, he classifies the cases in accordance with the subject-matter dealt with, under a large number of the familiar headings which would ordinarily occur to the practicing lawyer, such as contracts, deeds, assignments, mortgages, leases, corporation articles, wills, statutes and ordinances, titles to property, and administrative powers.

The book is fully documented and well indexed. It should serve a widely useful purpose.

EDSON R. SUNDERLAND.

University of Michigan Law School.

Essays of William Graham Sumner. EDITED BY A. G. KELLER AND MAURICE R. DAVIE. (New Haven: Yale University Press. 1934. Two volumes. Pp. xix, 499, viii, 534.)

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In this definitive edition, the editors have gathered together what they judge to be the best of the essays of William Graham Sumner. The volumes necessarily include chiefly sociological and economic essays, for it was in the field of sociology that Sumner delved in the years of his maturity. "I have renounced one branch after another," he once remarked, "in order to concentrate my efforts on what I could hope to master." The renunciation of political science came fairly early in his career.

Sumner's political essays were nearly all inspired by some burning political controversy. Sent to New Orleans in 1876 as one of the "visiting statesmen" to try to find out what kind of presidential election they had in Louisiana that year, he returned to write of "Republican Government." What he thought of the election he does not say, but he is clear that "government by interests produces no statesmen, but only attorneys." With the clarity of the English Utilitarians, whom he so greatly admired, he declares that "the assumption which underlies the republican system is that the voter has his mind made up, or is capable of making up his mind, as to all great questions of public policy; but this is plainly impossible unless he is well informed as to some great principles of political science, knows something of history and of experiments made elsewhere, and also understands the great principles of civil liberty." Sumner is convinced that "the law can only mark out the precautions necessary to be observed to secure the true expression of the people's will," provided there be an electorate intellectually disciplined to the task of self-government. The enactment of the Bland Silver Bill led Sumner to write "Legislation by Clamor," in which he observed that "one feature of the 'new time' into which we are hastening will be the subjection of legislatures to the pressure of groups of persons who are capable of controlling newspapers or combining votes."

The political writing of Sumner closed on a note of extreme pessimism. In "The Conquest of the United States by Spain," he denounces "expansionism and imperialism" as "nothing but the old philosophies of national prosperity which have brought Spain to where she now is . . . . and will lead us to ruin unless we are hard-headed enough to resist them." His failure to see that new problems of government find new solutions indicates that Sumner's earlier renunciation of politics was complete.

WILLIAM SEAL CARPENTER.

Princeton University.

A Program for Unemployment Insurance and Relief. By ALVIN H. HANSEN, MERRILL G. MURRAY, RUSSELL A. STEVENSON, AND BRYCE M. STEWART. (Minneapolis: University of Minnesota Press. 1934. Pp. 201.)

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This is a clear and well thought out description of the recommended features which the authors believe a model unemployment insurance system should contain. The writers now see clearly the defects in the Wisconsin system of plant reserves to which the two senior authors inclined in a previous book and realize that because of the unequal incidence of unemployment as between plants and industries, such a system would result in a great disparity of benefits as between different sets of unemployed workers. They, therefore, have come around to a state-wide pool which will ensure an equality of benefits within each state at least. The authors favor a four weeks' waiting period and a maximum benefit period under the ordinary insurance plan of twenty-six weeks. They are wise enough, however, to realize that during a period of prolonged depression there will be enormous numbers who after having exhausted their claims to standard benefits will still be in need. For these they propose a system of emergency benefits primarily financed by the federal government which will be graduated according to needs. In the determination of needs, they properly urge that income rather than total savings should be the primary criterion. In other words, a person with savings of $2,000 which yielded five per cent would not be compelled to give up all his capital before he would be eligible to receive emergency benefits, but would instead be credited with an annual income of $100 toward the maximum amount which would be given to him toward meeting his needs and those of his dependents.

Some such method as this will be necessary to care for the spill-over from the system of unemployment insurance which will inevitably occur during a severe depression. It is likely that this problem will be faced in any national or state legislation which is passed in the immediate future, but it will arise when the next depression occurs, and some such program as the authors and the present reviewer have advocated will have to be adopted if the situation is to be met with any adequacy. A revision of our system of Elizabethan poor laws with their principle of exclusive local support of the unemployed is also needed, since it is impossible for the depressed areas to care adequately for their own unemployed. National support is needed for such cases because only the national government, with its power to tax large incomes and excess profits, can tap the social surpluses which alone can adequately care for the unemployed.

The value of this study is still further enhanced by a scholarly discussion by Professor Hansen of the proper management of the reserves so as to transfer purchasing power from periods of prosperity to depression and thus help to stabilize industry. Mr. Hansen considers various methods of handling these reserves, and while guarded in his analysis, seems to indicate that by a combination of depositing the reserves in the federal reserve banks and the savings banks, booms may be slightly

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checked and purchasing power in periods of depression be reinforced. The book, on the whole, is one which can be read with profit not only by the student, but also by the legislator and by the intelligent citizen who wishes to inform himself on one of the great public issues of the day.

PAUL H. DOUGLAS.

University of Chicago.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

Professor Rexford G. Tugwell's *The Battle for Democracy* (Columbia University Press, pp. vi, 321) is, as one might expect from the authorship, another piece of New Deal literature. In his spare moments, Dr. Tugwell has gathered together his speeches and magazine articles delivered and written on various occasions and has enclosed them within the covers of a book for the enlightenment of this and other generations. While dealing largely in popular fashion with the economics of the recovery program, this *omnium gatherum* includes reflective, philosophical speeches before college students, speeches proving to bankers, business men, and editors that the author is not a subversive character in the governmental élite, and one speech on how to produce, how to consume, and how to develop a taste for American wines. It is a convenient thing to have Dr. Tugwell caged within the corners of one book. The work should prove to the more intelligent conservatives that Dr. Tugwell, while philosophically of the we-move-God-knows-whither school of the pragmatist John Dewey, still cherishes some of the principles of the Founding Fathers despite his brief sojourn in Russia. The conscious effort in most of the articles to show that "I am not radical after all" is offset by his experimentalist approach to modern economic and political problems—an approach which he gives all to understand is the truly American way. Some will read with jaundiced eye his praises and hopes for the accomplishments of the N.R.A. and the A.A.A. His judgments on these two contributions of the period when hope ran high and congressional obstruction ran low are already of the ancient past. One has the feeling that the experimentalist approach which is the spirit of the New Deal may place Dr. Tugwell's book among the dodos before another winter arrives. The book should be read now, and then again fifteen years from now, in order that one may check up on the New Deal as it was in the beginning, is now, and as it shall be. The check-up on the "shall be" will prove whether we have arrived at "a realm of coöperative plenty the like of which the world has never seen." Perhaps it is somewhat less than fair to hold Dr. Tugwell for a phrase written in a moment of rhapsody, but the phrase is there and it aptly characterizes the crusading spirit of the book.—JEROME G. KERWIN.

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America's Hour of Decision; Crisis Points in National Policy (McGraw-Hill Book Co., pp. 263), by President Glenn Frank, is, in part, an appraisal and an indictment of recent political, social, and economic life in the United States. It also offers, in very general terms, a partial program for improvement. President Frank believes that political democracy has resulted in crowd control, and he is convinced that the crowd will demand economic security and satisfaction from any political order, presumably employing the ballot as the first weapon in the political armory. Students of government will find interest, if not enlightenment, in the author's program for the restoration of democracy to its proper place. He advocates establishing a definite procedure for crisis government; the redefining of the spheres of the executive and the legislature; the fixing "for all time of the function of the expert;" and the adequate training of public servants. President Frank does not indicate how, in view of the constitutional and other difficulties inherent in the process of government in the United States, his program can be made operative before the possible advent of dictatorship, to which he is strongly opposed. His discussion both of this program and of the problem of preserving freedom constitute what the author designates, in another connection, "amateur excursions into political science." Economic improvement will result, he maintains, if we "move generally and promptly in the direction of higher wages, shorter hours, lower prices, and a narrower profit margin per unit of sale or service" (p. 107). He has confidence that private business enterprise can provide the economics of plenty, fearing that political direction of production and distribution will be unsuccessful. Here, again, the recommendations lack directness and are unconvincing. The author's criticism of the existing order and his warning against national disaster are sound and eloquent, although there will not be found in his florid rhetoric any adequate plan of action which can reasonably accomplish his purpose to maintain private enterprise and political liberty in a technological civilization.—THOMAS S. BARCLAY.

In the spring of 1934, the National Emergency Council published a loose-leaf *Manual of Emergency Agencies and Facilities*, as a textbook of the new government agencies. This included an outline of their organization and functions, supplemented in each case by a series of questions and answers explaining their scope and methods. From time to time, additions and revised sheets were issued noting new agencies and changes in those previously listed. At the beginning of the present year, a new and enlarged *United States Government Manual* was issued, covering the national administrative system as a whole. This begins with the ten executive departments, described in 125 pages, followed by other agencies, old and new, permanent and emergency, making in all 572 pages, plus an

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index of 42 pages. The new *Manual* is descriptive and does not use questions and answers, as did the Emergency *Manual*. No definite system is followed in the order of the non-departmental agencies, but the table of contents and index (both alphabetical) serve to locate any particular agency and its work. Additional and substitute pages will be issued from time to time.—J. A. FAIRLIE.

In *The Economic Consequences of the New Deal* (Harcourt, Brace and Company, pp. 85), Benjamin Stolberg and Warren Jay Vinton shoot their darts at the economic policies of the Roosevelt Administration. These form an inviting target, and the authors score many hits. In *The New Dilemma* (Fleming H. Revell Company, pp. 224), Mr. Roger Babson aims in the same direction in a series of chapters in which he criticizes the Administration a good deal, praises it a little, gives a little investment advice (carefully hedged), expresses some wisdom, ventures a good deal which is otherwise, and reminds us of the law of action and reaction. Mr. Babson's way out lies in a coalition government of experienced industrialists to whom President Roosevelt would turn over the job—God-fearing men who could replace the New Deal with "God's Deal." With one statement of Mr. Babson, Messrs. Stolberg and Vinton would agree, even if the God-fearing men might not. It is this: "No student of Jesus' teaching can defend capitalism except as a temporary measure." Messrs. Stolberg and Vinton cry out against "our fundamental malady, the maldistribution of wealth and income." In a jaunty style and with well-chosen aphorisms, they ridicule the "experiments" of the New Deal and insist that the only alternative is social planning on socialist lines.—S. G. LOWRIE.

You Are the Government (Little, Brown, and Co., pp. viii, 122), by Jouett Shouse, is a popular volume which will interest students of government mainly because it sets forth the views of the president of the American Liberty League. Chapters on the history of popular government, the bill of rights, and our dual form of government provide a foundation for the discussion of such problems as the swing toward dictatorial regulation, bureaucracy, increasing federal social legislation, the competition of government with private business, and the dangers inherent in excessive expenditures. It is of some interest to note that the voter is advised to find the way out through the medium of the two-party system. No attempt is made to analyze individual measures, the discussion being limited to tendencies, which are evaluated by reference to the Constitution in its earlier development.—W. REED WEST.

STATE AND LOCAL GOVERNMENT

Four leading authorities on the law and practice of city planning in the United States—Edward M. Bassett, Frank B. Williams, Alfred Bettman,

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and Robert Whitten—appear as joint authors of *Model Laws for Planning Cities, Counties, and States* (Harvard University Press, pp. viii, 137), but not precisely as collaborators. The first two, representing a cautious and conservative approach, together propose three enabling acts (municipal zoning, municipal planning, and county planning) and a state planning act, together with a general discussion and explanation of their drafts. Their zoning act follows closely the Standard Zoning Act of the United States Department of Commerce, and their city planning act is based mainly on the New York laws of 1926 and 1927. In their work they are deeply concerned to produce legislative drafts which can be adopted, and which will be almost, if not quite, certain to be sustained by the courts. On the one hand, they avoid using language of compulsion toward local authorities, and on the other they make it indubitably clear that the property-owner shall have his appeal to local zoning boards of appeal and also to the courts. Mr. Bettman presents nine separate drafts, covering all that Messrs. Bassett and Williams do, and also regional planning, zoning, and subdivision control. In his discussion, as well as in the texts of his bills, he shows a willingness to try new things and a desire to concentrate a great deal of power over all phases of planning, including zoning, in the local planning commission. He would put restrictions on boards of zoning appeals in making changes in the zoning map, and he would not permit the local council to deviate from the proposals of the planning commission except by a two-thirds vote. Dr. Whitten, the only non-lawyer in the group, in a concluding section supports, in general, the position of Mr. Bettman but goes somewhat beyond him. He feels that "the planning or correlating function is one that in some respects should be on a par in independence within its peculiar sphere with that of legislation and administration." Instead of submitting complete drafts to carry out his ideas, he presents drafts of a few leading sections, one in which a combined planning and zoning power is conferred on local councils in very broad language, and another in which the relative powers of the council and the planning commission are defined, to the great advantage of the latter. He would go farther than any of the other three in uniting all planning powers in the planning commission. The draft acts on state, county, and regional planning printed in this volume are of special importance in connection with the current work of state planning boards. An index would have made the work much more convenient to use.—WILLIAM ANDERSON.

Practical researches in American government are gradually developing a characteristic method of presenting their material—a method undoubtedly conditioned by two outstanding factors. In the first place, these researchers are unhandicapped by the problem—so harassing to

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textbook writers—of including and reconciling both the theoretical and the practical approach to a subject. Furthermore, their reports are specifically compiled for the busy legislators or government officials who desire up-to-date information concisely presented and purposefully directed toward the solution of definite practical problems. As a result, certain criteria have arisen: (1) the adoption of a style which is both interesting and intelligible; (2) the clear-cut breakdown of material into logical subdivisions (this may be achieved by use of the question and answer method, by use of effective subheads, or by other similar devices); (3) the inclusion of data on as many units of government as possible so that readers may calculate with reasonable accuracy the effect of the proposed legislation on their own units. Three recent studies of the research department of the Kansas Legislative Council—which is under the direction of Dr. F. H. Guild—may furnish interesting ideas for many political scientists, although they were designed primarily for legislators and state officials. These reports are, on the whole, excellent examples of the technique outlined above, although they do not observe the conditions of the second criterion. The report on *State Police* (pp. 84) includes sections on the organization, administration, and estimated efficiency of existing systems, and also considers the probable cost and technical procedure of instituting such a system in Kansas. The emphasis on book knowledge is possibly explained by the fact that a report of the Kansas League of Municipalities which stressed the practical aspects of the problem appeared almost simultaneously. *The Sales Tax* (pp. 97) contains text and tables on present exemptions, concentration of collections, disposition of revenue, incidence of the tax, and on various administrative features such as cost and effectiveness of collection. Although the treatment of such difficult points as the incidence of taxation is somewhat technical for legislative readers, the study as a whole presents valuable information on questions which should be considered before the adoption of a state sales tax. *Old Age Pensions* (pp. 41) presents a lucid analysis of laws in other states and contains estimates of the probable costs in Kansas, as well as comprehensive tables on the number and conditions of aged on the relief rolls of the various counties in that state. The preparation of such studies may bring smaller dividends in terms of academic prestige than would investment in the great professorial monopoly of textbook writing; but the material in hand is current and stimulating, the problems are direct and insistent, and, further, the solutions—if there be any—are of concrete value to the community.—GEORGE C. S. BENSON.

In *The Public Utility Franchise in Missouri* (University of Missouri Studies, Vol. 9, No. 4, pp. 83), J. Rhoads Foster has presented a careful

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analysis of the use of the short-term franchise as a means of public utility regulation in that state. Although much has been written on the utility problem, little or nothing has appeared on franchises since the great work by Delos Wilcox in 1910; and although studies of franchise regulation have been regarded as purely academic, Mr. Foster points out that the franchise has significance in that it provides for municipalities a last vestige of control and that the franchise is of importance in the shift from private initiative to public ownership. Missouri has moved through various stages in the regulation of public utilities. Litigation was superseded by legislation, then followed by commission regulation. The municipalities granted franchises to utilities, and with the advent of commission regulation in 1913 questions were constantly raised in the courts as to the power of municipalities to regulate. The legislature delegated to the commission authority to control rates and the terms of service of street railway companies operating under franchises. The same authority applied to other utilities, and the power to write into the franchise contract terms binding as to rates, conditions of service, valuation, capitalization, and accounts was withdrawn from Missouri municipalities. The author states: "The value of the franchise as a regulatory device is narrowly limited." He questions the usefulness of the short-term franchise as required by statute and points out that, as an agency of control, it is limited by political activities, by the fact that the city may adopt municipal ownership *only* at the date of expiration of the franchise, and that rates and service may be affected as a result of the short term for which the franchise is granted. The author recommends the indeterminate permit. He points out, however, that the certificate of convenience and necessity may be used to secure the same result and recommends its use. Mr. Foster concludes that some control by the municipality is desirable, but that the short-term franchise is undesirable. The certificate of convenience and necessity would allow the municipality concurrent jurisdiction with the state commission over the right to begin construction and operation. A satisfactory bibliography is provided, but there is no index.—FINLA G. CRAWFORD.

In the fourth edition of Finla G. Crawford's *The Gasoline Tax in the United States, 1934* (Public Administration Service, No. 44, pp. 46), factual information contained in previous editions is brought up to date and the trends in gasoline taxation within the past two years are outlined. Laws have been improved and administration has been strengthened. Tax administrators, with the coöperation of the petroleum industry, have worked strenuously to lessen the evasion evil, and with considerable success. Exemption and refund provisions of laws seem destined for curtailment or elimination by the legislatures. Rates appear to be

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stabilized at the present level, and there is powerful opposition to rate increases. Only a slight reduction in the net earnings of the tax is noted as compared with the peak of 1932. The stability of the tax, contrasted with the tremendous shrinkage of other sources of state revenue during the depression years, has encouraged state governments to apply gasoline tax revenues in part to non-highway purposes. Diversion has increased since 1931, and, Professor Crawford thinks, will probably continue. Cities, ignored in early allocations of gasoline-tax funds, are vigorously demanding, through their state organizations, greater participation in the distribution of the revenues. These controversies over diversion and distribution indicate that the permanent position of the gasoline tax in the fiscal program of the states is yet to be determined. While the drafting of a model gasoline-tax law does not seem practicable, greater uniformity in state legislation is desirable. Professor Crawford's monograph remains the standard treatment of this popular and important tax.—FRANK M. STEWART.

In the careful study reported in his *The Units of Government in the United States* (Public Administration Service, No. 42, pp. 38), Professor William Anderson has made a distinct contribution, particularly by formulating a definition of a unit of government which he has applied to all the existing agencies to determine the number in the country. In many of the enumerations which have been made heretofore, no basis of classification has been presented, so that future students could proceed in their research on the same line. Professor Anderson has given us a series of tests with which we may disagree but which are clear and definite. The inclusion of the test that a "governmental unit" must have the power to raise revenue, as well as spending power, serves to eliminate those administrative agencies which lack taxing power in one form or another. The second section of the study is devoted to a determination of the most desirable size of a local government unit, and on this point the author states that no dogmatic answer can be given so far as cities are concerned. In regard to rural units, he believes that economic and administrative factors should be kept in the foreground. The final section is concerned with the most desirable number of local governmental units. After eliminations and consolidations, Professor Anderson reduces the number to 17,850, or one-tenth of the total now in existence. He explains that the main purpose of this section is "to set a goal—a goal which will not appeal to all as worthy, and one which may never be reached."—Finla G. CRAWFORD.

A Survey of the Government of Pennsylvania (Bureau of Publications, Harrisburg, pp. xxi, 687) is an excellent example of a comprehensive state survey by a legislative committee. This is a report of the Sterling

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Committee which was appointed by a joint resolution of the state legislature in 1929. The object of the committee was "to engage in a comprehensive study and survey of the organization of our state government, thereby to ascertain whether economies might be effected . . ." (p. vii). For the purpose of the study, the committee divided the government into elective and appointive departments, and it gives a short sketch of the history, work, and duty of each unit. One of the very valuable features of the report is the list of charts and tables. A chart is given of each unit of government, and tables are given listing the officers, salaries, and appropriations for the last several years. At the end of each chapter, the committee gives a list of recommendations for integrating and abolishing some of the work; but it adds: "There has been no desire to propose any sweeping or spectacular changes in the state government" (p. viii).—JAMES A. GATHINGS.

The second edition of John Mabry Mathews' *American State Government* (D. Appleton-Century Company, pp. xx, 759) adds valuable material to an excellent treatise. Those beginning their study of government with this volume may find the new first chapter's introduction to political science useful. The expanded treatment of federal and interstate relationships, both legal and administrative, is probably the outstanding and timely feature of the revision. A pedagogical problem is raised by the inclusion of sections pertaining to state finance in a new chapter (V) on "The States in Depression and Recovery," rather than in the chapter (XIX) on "Taxation and Finance," which has undergone little change. The remaining material in Chapter V might be incorporated with appropriate topics in other chapters; but doubtless the author felt that the "New Deal" policies affecting the states should be studied by themselves. Nebraska's constitutional amendment for a unicameral legislature is in the final appendix. It was evidently adopted too late to be discussed in the chapters dealing with the legislature. The recent movement toward frequent and short legislative sessions is not noted.—HOWARD WHITE.

In 1933, the Harvard chapter of Phi Beta Kappa voted to publish annually an essay chosen from the best distinction theses submitted for the Bowdoin prizes in each department of the college. "The purpose conceived was that the book so published should serve as an indication of the sort of work being done in college and as a reward for distinctive originality in thought and approach." In *A Study in Highway Economics* (published by the Society, pp. xi, 109), by Wilfred Owen, it seems to the reviewer that this purpose has been well served. The essay confines itself to highway economics and deals with such apposite matters as the economic aspects of highway planning, the allocation of costs, and a

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critique of present schemes of motor-vehicle taxation. The author has discussed these subjects in the light of the basic data as to costs, road wear, and the relative burdens on the various interests involved supplied by engineering and economic research. Keeping in mind the purpose for which it was written and the limitations which the author imposed upon himself, the essay seems admirable from the point of view of thoroughness, clarity, and conciseness.—LANE W. LANCASTER.

FOREIGN AND COMPARATIVE GOVERNMENT

In *Le Contrôle de la Constitutionnalité des Lois Fédérales par le Juge aux État-Unis et en Suisse* (Bâle, pp. 112)—a report presented to the general assembly of the Society of Swiss Jurists at Lausanne—Professor William E. Rappard compares the control over the constitutionality of federal laws by judges in the United States and in Switzerland. The larger part of this very interesting treatise is devoted to an historical résumé of American and Swiss constitutional history to show why the people of the United States have entrusted the final interpretation of the national constitution and laws to the courts and why the people of Switzerland have, after careful deliberation and thorough discussion, refused to adopt judicial review of federal acts. Examining the American practice of judicial control over legislation, the author raises the query whether a feature of government well adapted to accomplish the ends desired in the eighteenth century, which is so essentially dominated by ideas and principles of conservatism, can be adjusted to meet the needs of more than a hundred million people in the twentieth century. The survey of Swiss constitutional history indicates clearly that the chief reason why judicial review of federal legislation has not been approved in Switzerland is because it was considered anti-democratic, and hence not in harmony with the essential spirit and background of the prevailing political institutions. Recognizing that judicial control over legislation may be justified under certain circumstances on the ground of expediency, it is believed that the appropriate development of nationalism and the dominance of public over local and special interests required the adoption of legislative supremacy in Switzerland. The successful way in which Professor Rappard has placed under critical scrutiny and contrast one of the foremost features of the governments of two leading democratic republics makes one wish that more studies of this kind might be presented in the field of comparative law.—CHARLES GROVE HAINES.

Any lingering impression that the British National Government brought about recovery by doing nothing at all during its first three years in office is dispelled by Herbert Heaton's *The British Way to Recovery: Plans and Policies in Great Britain, Australia, and Canada* (University of Minnesota Press, pp. vi, 184). A well-laid foundation of social

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legislation eased Britain's descent into the depression, but her government had to strike out vigorously in many new directions in order to achieve the measure of recovery so far enjoyed. Professor Heaton gives a lively and very readable account of the imposition of economies, the schemes for the rationalization of industry, the abandonment of the gold standard, the adoption of protection, the relief of agriculture, and the other elements of the British "New Deal." This account, and also the chapter each on Australian and Canadian policies, reveals a keen perception of the problems of the countries immediately affected as well as of this country. Many parallels and lessons for American recovery are suggested. A fuller analysis of British thought on the efficacy of a public works program would have been welcome, in view of the greater attention likely to be given in the near future to that subject in Great Britain and elsewhere. A number of papers and discussions by members of study groups of the Toronto branch of the Canadian Institute of International Affairs have been brought together under the editorship of H. A. Innis and A. F. W. Plumptre in *The Canadian Economy and Its Problems* (Canadian Institute of International Affairs, pp. 356). These papers give an extraordinarily complete survey of the economic life of Canada, analyze the problems of the depression, and make suggestions for recovery. Skillful analysis and clear exposition are characteristics of nearly all of the contributions. These authors have been their own critics, and their coöperative volume is good evidence of the value of the group discussion method of investigating social problems. American political scientists will be particularly interested in the frequent mention of constitutional problems in this volume, as well as in Professor Heaton's chapters on Australia and Canada.—JOSEPH R. STARR.

In his *Britain's Political Future* (Longmans, Green, pp. xiv, 192), Lord Allen of Hurtwood makes a moving appeal for renewed faith in democracy, which he believes suffers less from inherent defects than from lack of faith on the part of its adherents and from their failure to adopt a modern political technique. A real change has come over the electorate, he is convinced, through the spread of education; yet politicians insist on treating the elector as a moron who can be goaded into action only by exciting his most primitive emotions. What is needed is bold, constructive leadership—a leadership which will bank on the rationality of the elector, which will take him into confidence, and will place before him the real issues of politics and explain them to him in intelligible terms. Above all, the faith of the elector in the democratic process must not be weakened by appeals to the class war or other programs of violence. Lord Allen believes that most of our problems could be solved with relative ease if the public would assent to the right solutions. But the solutions are dis-

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coverable alone by reason, not by violence. Violence, whether from the right or the left, no less than war, threatens our civilization; the only hope is a return to reason, and democracy alone offers this hope. Concrete reforms are suggested, none very original or fully worked out, but Lord Allen is less interested in specific reforms than in reviving a dying political faith. As for the new technique, it seems to consist in the use of the radio to educate the public politically, combined with an appeal to the rational rather than the emotional side of man's nature. If the book is a bit naïve, it is refreshing in these days of colored shirts to find a passionate believer in the fundamental concepts of democracy. And Lord Allen may well be right; democracy may be in danger of perishing for lack of believers with the courage to put their beliefs into practice.—ROBERT A. MACKAY.

Those who think that the end of English rule in India will be a disaster to England seem to be disturbed by the current attempts of the Indian people to set themselves free. To show how perverse are the Indian nationalists who aspire to self-government, Edward Thompson and G. T. Garrat have written a history of India from the sixteenth century to the present: *Rise and Fulfillment of British Rule in India* (Macmillan and Co., pp. xi, 690). To intimate that the altruistic and democratic aims of British rule have already been fulfilled and that India is a free nation in the British Commonwealth of Nations seems a bit premature. Even when the proposed India bill goes through at Westminster, the viceroy will be able to rule India more autocratically than Mussolini, Hitler, or Stalin rules Italy, Germany, or Russia. The book recites the story of the East India Company, the administration of the various governors-general, the endless wars and conquests, and finally the encounter of imperialism with nationalism; but it contains little that is new or original, except some side-remarks. With all their liberalism, the authors are revealed as patriots and imperialists. "Our first loyalty," they admit in their preface, "is to our own country." Unhappily, patriotism and truth do not always mix.—SUDHINDRA BOSE.

The Budget in Governments of Today (Macmillan Co., pp. vi, 349), by A. E. Buck, is composed of ten chapters as follows: "The Budget—A Sketch of Its Origin and Development," "General Aspects of the Budget," "The Rôle of the Executive in Budgeting," "The Rôle of the Legislature in Budgeting," "The Budget as a Financial Plan," "Formulation of the Budget," "Authorization of the Budget," "Execution of the Budget," "Accountability for the Budget as Executed," "The Outlook for the Budget in the United States." The book ends with a selected bibliography giving, first, a few outstanding books in the general field (one page) followed by a bibliography as to the theory of budgets and budget practice in Great Britain, the British Dominions (Australia, Canada,

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India, Newfoundland, New Zealand, and South Africa), France, Germany, Italy, Belgium, the Netherlands, the Scandinavian states, Switzerland, the post-war states of Europe, Soviet Russia, Japan and the Orient, the United States, and the Latin American states, a total of twenty pages. The book throughout bears the imprint, not only of wide reading, but of definite practice in actual budget-making. It is well indexed. It is clear in style, and thoroughly informed in presentation. It will, therefore, live as a work of real value, speaking the needs and the ambitions of this world so dominated by the human race, both in shortcomings and in achievements.—CLYDE L. KING.

Under the title, *The Background of European Governments* (Farrar and Rinehart, pp. xv, 604), Professors Norman L. Hill and Harold W. Stoke have compiled an attractive volume of readings on the organization and operation of the major European governments, *i.e.*, those of Great Britain, France, Germany, Italy, and Russia. Some of the materials presented are of an official and documentary character, but a large share consist of passages from standard works, selections from magazine articles, and materials drawn from pamphlet or similar publications, not excluding newspapers. Each selection is preceded by a few explanatory sentences, but in the main the compilers have been content to allow the "readings" to speak for themselves. The choice of materials has been made with discrimination, and teachers of European and comparative government will undoubtedly find the collection a convenient and useful tool.

INTERNATIONAL LAW AND RELATIONS

World Court Reports; A Collection of the Judgments, Orders, and Opinions of the Permanent Court of International Justice, Vol. I, 1922–1926 (Carnegie Endowment for International Peace, pp. xxix, 777), edited by Manley O. Hudson, is the first of a series of continuous volumes which are to contain the texts of the judgments, orders, and advisory opinions of the Permanent Court of International Justice as they appear from time to time. They are designed to serve somewhat the same purpose as the two earlier volumes published by the Carnegie Endowment and edited by James Brown Scott, containing the texts of the awards of the Hague Permanent Court of Arbitration. The present collection will be a great convenience to all students of the jurisprudence of the Permanent Court, because the official collection of the Court, running as it does into many volumes, is too cumbersome for convenient use by those who wish merely to consult the decisions of the Court. The present volume contains, in addition to various lists, tables, texts of documents relative to the existence of the Court, etc., the texts of forty-four judgments, opinions, and orders of the Court covering the first four years of the Court's

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existence. It does not include other documents found in the official publications of the Court, such as the "cases," mémoires, and oral arguments of the parties. The value of Professor Hudson's work is greatly enhanced by the notes of the editor, the bibliographies, and the meticulous arrangement which he has followed. Thus the corresponding pages in the official publications of the Court are indicated on every page of the Hudson text by means of bracketed numbers in bold-face type. In these and other respects, the editor has displayed his usual carefulness and thoroughness in the effort to make his collection convenient and useful. By reason of his familiarity with the history, jurisprudence, and publications of the Court, no one was better qualified to edit its decisions than he. He has done as nearly a perfect job as one could do, and every one who has occasion to consult the decisions of the Court will be in debt to him for making available this convenient and easily usable collection.—JAMES W. GARNER.

In the second volume of "Studies in Hispanic American Affairs," issued under the auspices of the George Washington University, attention is focused on the Caribbean. *The Caribbean Area* (George Washington University Press, pp. vii, 604), edited by A. Curtis Wilgus, director of the University's Center of Inter-American Studies, includes the lectures given by ten authorities at a seminar in July and August, 1933. There are added four appendices treating of more specific matters. The volume has the merits and defects which inhere in a collection of papers of this sort. With several lecturers participating, it is difficult to get an entirely common denominator for the problems to be considered, there is an insufficient possibility of reconciling the varying points of view, and there is the probability of some duplication in presentation of material. On the other hand, the offering of different points of view is in itself stimulating, and the tapping of authoritative sources of information permits a more intimate and valuable view of a broader field than would otherwise be possible. Those presenting papers to the seminar included Dr. Samuel G. Inman of Columbia University, who discussed the significance of the Caribbean and its general political and social life; Professor Clarence F. Jones of Clark University, who presented an illuminating and well interpreted factual analysis of economic conditions; Professor Leland H. Jenks of Wellesley College, who gave a provocative discussion of recent conditions in the Dominican Republic, Haiti, Puerto Rico, and Cuba; Dr. Herminio Portell Vilá, who presented an intelligent Cuban interpretation of "Cuba Past and Present"; Dr. George Howland Cox of the George Washington University, who presented a reflection of Cuban conditions as he had observed them during a recent visit; Dr. Roscoe R. Hill of the Library of Congress, who ably discussed conditions in Central

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America; Professor W. H. Callcott of the University of South Carolina, who read several stimulating papers on Mexican developments; Professor J. Fred Rippy of Duke University, who contributed a paper on modern Colombia; Professor W. W. Pierson, Jr., of the University of North Carolina, who discussed the political and religious situation in Venezuela; and Professor Chester Lloyd Jones of the University of Wisconsin, who presented a meaty consideration of economic, political, cultural, and other conditions and prospects and a clarifying analysis of United States policy in the Caribbean. Drs. E. Gil Borges, C. L. G. Anderson, James A. Robertson, and William E. Dunn contributed appendices. It is to be regretted that the lectures as printed could not be more fully documented for the sake of the research student. A sketch map of the Caribbean and a composite bibliography would also have added to the value of an already valuable volume.—RUSSELL H. FITZGIBBON.

"The effectiveness of national power," declares Dr. Brooks Emeny, in *The Strategy of Raw Materials* (Macmillan Co., pp. xiv, 202), depends upon "its capacity for industrialization." "Industrialization presupposes" either "possession or ready availability" of basic raw materials. Therefore, disparity of distribution of these raw materials must have "important bearing" upon the relations of nations in peace and in war. Dr. Emeny then analyzes, with the aid of original charts, maps, and tables, the situation of the United States regarding each of the strategic raw materials and foodstuffs. He considers principal uses, sources of peace-time supply, and potential sources of war-time supply under a hypothetical two-year blockade. He concludes that of the War Department's list of "strategic" materials, only five or six are of vital concern. Regarding each essential raw material there exist "tenable solutions" of procurement problems. Among the seven Great Powers, the United States, according to Dr. Emeny, enjoys an "incomparably superior" degree of self-sufficiency in essential raw materials; and this notwithstanding the fact that the "United States is overwhelmingly superior in size of output and consumption." Only a complete blockade—"an impossible feat"—could deprive us of imports. Canada and Latin America present to this country more secure sources of supply than colonial possessions offer other Great Powers. Only the British Empire and Russia approach the advantage of the United States in potential war-time self-sufficiency. The raw material situation of the British Empire is "largely complementary" to that of the United States. Therefore the United States, with the British Empire allied or neutral, would have few problems of procurement. These two nations produce sixty per cent of the world's industrial commodities, and control, politically or financially, over seventy-five per cent of its mineral resources. In other words,

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they hold the balance of power in essential commodities. As to the United States, Dr. Emeny concludes, ". . . the formidable character of our inherent national strength, derived from our raw-material position, must give pause for thought on the part of any nation contemplating the risk of hostilities with us."—HAROLD H. SPROUT.

The Council of the Royal Institute of International Affairs decided some time ago to sponsor the publication of a one-volume history of post-war international relations. This formidable assignment was accepted by Mr. G. M. Gathorne-Hardy, whose personal qualifications ensured from the beginning the success of the undertaking. His recently completed volume, *A History of International Affairs, 1920–1934* (Oxford University Press, pp. x, 350) is an admirable product. To begin with, it is far more than a mere distillation of the ten volumes of the Institute's annual *Survey of International Affairs* served up in compact form for the use of the layman. The author has, of course, used these materials freely, but he has refused to be intimidated by them, and his book profits thereby. He has adhered rigidly to the ground plan of the work and has at all times avoided any comments upon political developments within any country, a policy which ruled out even a treatment of the problems of the British Empire. He displays an impressive capacity to see the tangled affairs of the post-war world as a whole, and to maintain, in face of all the confusion, a cool detachment which makes it possible for him to sketch in broad strokes the essential aspects of each problem, leaving wholly out of the picture the minor and inconsequential features. This ability is sharpened by a pungent style and a refreshing common-sense point of view. A single example must suffice. In discussing the prospects for peace, he says crisply: "When we are told that another war means the destruction of our civilization, the question still remains whether a civilization so effete as to shirk its obligation to prevent the use or the successful threat of force is worthy of preservation." The book can be recommended unreservedly.—GRAYSON L. KIRK.

De Jure Naturae et Gentium Libri Octo, by Samuel Pufendorf. Volume One, Photographic Reproduction of the Edition of 1688; Volume Two, Translation of the Edition of 1688, by C. H. and W. A. Oldfather. Introduction by Walter Simons. (Oxford, 1934.) When the Carnegie Endowment's Division of International Law photographically reproduces the principal work of Samuel Pufendorf, adding to the reproduction what seems to be an irreproachable translation by such classicists as C. H. Oldfather and W. A. Oldfather, and an introduction in German and English by a former chief justice of the Reichsgericht and president *ad interim* of the Reich, it seems the better part for a reviewer simply to record these facts and then subside. The translators especially are to be

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congratulated: no care was too great if it would clear up a misprint in the Latin text, correct a reference, or otherwise assure an accurate rendering. The introduction contains an account of Pufendorf's life and a synopsis of the work.—LLEWELLYN PFANKUCHEN.

POLITICAL THEORY AND MISCELLANEOUS

As the final systematic and considered statement of the political philosophy of Hermann Heller, his posthumously published *Staatslehre* (A. W. Sijthoff's, Leiden, pp. xvi, 298) is something of an event. To the end, the author, unlike so many of his colleagues, upheld his intellectual incorruptibility against well-known methods of Nazi persuasion. Quite understandably, the book was published in Holland. Although Heller unfortunately could not complete this last great work before his untimely death in Spain, the part published hangs together systematically and furnishes a good indication of his whole theory. It also evidences much insight, subtlety, and comprehensiveness, as well as the thorough integrity of the author. Heller also possesses a strong feeling for actuality, all too rare among the German political theorists, and a readable style. The author fearlessly and convincingly criticizes such "all or nothing" theories as Kelsen's abstract science of pure norms, Carl Schmitt's Machiavellian "decisionism," one-sided theories of economic determinism, or crude theories of the influence of race on politics, so important in Nazi ideology. Heller's own approach is the dialectical one. He conceives the true nature of such favorite categorical antinomies as subjectivity and objectivity, individual and community, state and society, state and law, *sein* and *sollen*, might and right, to be one of inseparable and interactive relationship. For example, the normative aspect of law tends to cause it to be actually obeyed, and *vice versa*, actual conditions of authority and obedience tend to assume a mantle of legality. Heller steers a judicious course between extremes in his theories of state, law, and sovereignty. The reviewer regards them as both profound and consistent. Nevertheless, he feels that Heller over-estimates the peculiar significance of that "monopoly of physical compulsion" possessed by the state; that his theory of a sovereignty in the state itself is a valueless fiction; and that his definition of law as that system of social norms consciously established and perpetuated through a special organization, i.e., the modern state (cf. p. 186), leaves much to be desired. In the last analysis, however, the book is a significant and stimulating contribution from a brilliant mind, at once profound and realistic.—MAX A. SHEPARD.

If recent publications are fair evidence, the new fashion in political theory calls for the use of the term "power" to replace the term "sovereignty." Not only is there Merriam's *Political Power*, but two shorter essays, *The State as a Concept of Political Science*, by Frederick Mundell

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Watkins (Harper and Brothers, pp. 84), and *A Sequential Science of Government*, by Dennis DeWitt Brane (Western Reserve University Press, pp. vi, 90) have lately appeared in which the authors seek to restate the scope and contents of political science. They find the essential clue in the analysis of the location and exercise of power in human associations. Both authors argue from this that political science is therefore not confined to a study of the state, but includes "social control in all societies and among all societies" (Brane), of "all associations in so far as they can be shown to exemplify the problem of power" (Watkins). The term "power" will doubtless soon develop ambiguities as distressing as those which have developed about the term "sovereignty"; but there is much to be said in favor of utilizing the all too brief period of time before they develop in an effort to obtain new insights from this shift in point of view and approach. The two monographs mentioned, however, lack the value of a similar restatement of the rôle of politics which Dewey gives in the first three chapters of his *The Public and Its Problems;* nor do they offer such stimulating concrete suggestions as might come from students of politics familiar with the operation of various kinds of associations. Illustrations of possibilities of this kind are *The National Being*, by George Russell, and Brady's *The Rationalization Movement in German Industry*. We shall have many such studies, probably, after the experience with New Deal projects has been assimilated by some of the more sensitive and thoughtful of those now too busily engaged in administration to appraise and write. Nevertheless, the authors are to be commended for undertaking a task which every teacher of politics owes it to himself and to his profession to undertake at some stage of his development.—JOHN M. GAUS.

The prevailing tendency away from departmentalism in teaching, and toward a re-synthesizing by investigators and teachers of the results of specialization, is well illustrated in G. D. H. Cole's *Some Relations between Political and Economic Theory* (Macmillan and Co., pp. vii, 92). Mr. Cole demonstrates the essential unity of political and economic theory, which the nineteenth century *laissez faire* doctrines caused to "drift far apart." Having reviewed the more apparent than real separation in the "absolutist" doctrines of the *laissez faire* period, he finds political and economic theory acknowledgedly reunited in the collectivist doctrines, the ground for which was laid, he shows, by the Utilitarian theory that social organization is not itself an end, but the means to the end of good living; and by the evolutionary ideas and the dialectic of Hegel, "at once the spiritual step-father of Marxism and the spiritual father of modern Fascism and the corporative state." In a chapter on Marxism, the close relation of the economic to the political in the Marxian theory

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is examined. Cole's conclusion is "that there is in the practical field no such thing as a purely economic or a purely political problem." It is obvious throughout that the author has in mind practical as opposed to theoretical economics and politics; as in the definition of political philosophy as the study of "the ultimate and absolute principles of political right and obligation;" and in the statement that "the ultimate problem of political theory is one of ends and not of means." The reviewer would ask, however, whether there may not be, from the more "ultimately" philosophical point of view, a study of the nature of the political phenomenon and of the laws of its working which may be designated as "political" in its own right. Mr. Cole's book is stimulating and thought-provoking, and quite as valuable for the light thrown along many by-ways as for that shed on its main path.—ELLEN DEBORAH ELLIS.

Population Theories and Their Application, with Special Reference to Japan (Food Research Institute, Stanford University Press, pp. xiv, 347), by E. F. Penrose, is a wholly admirable product of the joint efforts of the author, the Food Research Institute, the Social Science Research Council, and the Institute of Pacific Relations. Its pages are packed with new evidence, much of it highly damaging to current assumptions, set forth with scholarly detachment, clarity, and force. Taking the position that a study of the increasing populations of eastern Asia must be preceded by a clarification of thinking upon population theory, the author works out a theory, which, rejecting the Malthusian view, regards population as affected by many factors, some of which are humanly controllable. Penrose holds that the proper objective of a population theory is to discover a "concept of an ideal or optimum relationship between numbers and resources that will serve as a standard in the light of which the actual relationship may be evaluated" (p. 49). Such a concept he formulates in terms of a per capita welfare optimum based upon consumption (p. 84). Parts II and III may be taken as the author's appreciation of the degree to which such an optimum prevails in Japan and of certain discussed methods of remedying deficiencies. While refuting generally accepted views regarding high rate of increase, abnormal fertility, influence of ancestor-worship, opposition to contraception, etc., Penrose finds that the Japanese diet is unbalanced and the agricultural population too large. His remedy for the latter is transference of farmers to manufacturing, and expansion of foreign trade. Emphasizing the critical character of the next twenty years, the author is optimistic on prospects in the industrial field. He opposes on economic grounds, as well as for its bearing on migration, the current policy of Japan respecting Manchuria. He doubts the advisability of accepting unoccupied tropical lands even as a gift. Two excellent chapters on migration present a

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remarkably well-rounded discussion of racial character and conclude with an argument for controlled migration.—HAROLD S. QUIGLEY.

Two recent publications of the University of North Carolina Press, *An American-Mexican Frontier* (pp. xiii, 337), by Paul S. Taylor, and *Organized Labor in Mexico* (pp. 315), by Marjorie R. Clark, may well be considered together. Both are the result of studies conducted under grants from the Social Science Research Council. The first is a social, economic, and political study of the Mexican population of Nueces county, Texas. These people belong largely to the laboring class and in 1930 constituted 44.9 per cent of the total. They are engaged for the most part in cotton culture. The first third of the book is devoted to historical backgrounds, showing the effects of American penetration, border conflicts, and the shift from a ranching to an agricultural economy. Additional chapters deal in detail with present-day labor conditions; the final chapters consider such matters as law observance, property ownership, education, social relationships with the Anglo-American population, and the part played by the Mexican in politics. While only one county is studied, the facts presented and the conclusions drawn are typical of other parts of South Texas where considerable economic development has taken place, and where a large element of the population is Mexican in origin. *Organized Labor in Mexico* is a comprehensive study of the beginnings, recent history, and present status of the labor movement in Mexico. The narrative is an intricate one as it is carried through the régimes of Madero, Carranza, Obregón, and Calles to the present. Labor organizations rise and fall with the changing policies of successive political leaders. The intimate relationships between politicians and labor leaders and the intensely opportunistic tactics of the latter in particular are most amazing, as well as the chicanery which has usually been the rule in governing the conduct of labor leaders and in administering labor laws that, on paper at least, have been in many respects most advanced. One is also impressed by the strongly nationalistic character of the Mexican labor movement. From a careful perusal of both of these studies, the reader gains a fair understanding of the psychology and of the possibilities and limitations of the Mexican laboring class on both sides of the Rio Grande.—O. DOUGLAS WEEKS.

In their *Race Relations* (D. C. Heath and Company, pp. x, 590), Willis D. Weatherford and Charles S. Johnson have made a distinct contribution to knowledge of a very vexing problem. Dealing with race relations largely between whites and negroes, the book is unique in that it was written by a white man and a negro. The inquiry of the authors is directed first to the important question of what is race, and no satisfactory answer is found. Racial antipathies are aroused more sharply when there is keen

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economic competition between races and are most bitter when whites and negroes find themselves more nearly on the same social level. American negro slavery is dealt with in a rather comprehensive manner. The most interesting part of the volume, perhaps, is the last part, which treats of the present status of the negro and race relations. Here the authors show how negro jobs such as cotton-culture, street-cleaning, boot-blacking, and garbage collection are passing into the hands of white people. The Ku Klux Klan and the Black Shirts have demanded almost wholesale displacement of negroes by whites. The authors are rather hopeful that the tenseness between the races is being alleviated, due to a better understanding reached by conferences and to closer study of the problem by both races. The Commission on Interracial Coöperation, headed by Dr. Will W. Alexander, is doing a fine work along this line. The only thing, in the eyes of the reviewer, that detracts from this excellent book is the use of a jargon. The most effective way to present a difficult subject is by the use of simple and clear words rather than highly technical ones. It is said that the reason why political science is not a science is because of the fact that it lacks a jargon. One almost wishes that it will never have one.—CULLEN B. GOSNELL.

Though every student will doubtless have his own opinions as to what deserves preservation, it seems to the reviewer that *Public Finance, Selected Readings* (Longmans, Green and Co., pp. xii, 960), edited and annotated by Elmer D. Fagan and C. Ward Macy, is a competent and adequate choice of materials. The book is divided into four parts dealing, respectively, with public expenditures, public revenues, public credit, and financial administration. The section on revenues comprises somewhat more than half of the volume—probably a disproportionate amount, considering the present importance of the questions connected with public spending and financial administration, subjects which are represented by 95 and 105 pages, respectively. This disparity, however, may be justified by the expressed desire of the editors to "reproduce studies in which emphasis has been placed upon fundamental economic principles in their relation to the problems of public finance." The editors have not only supplied notes where necessary to introduce a selection, but have appended to each chapter lists of questions for discussion, suggestions for research, and a bibliographical note. These features are so well done that, in the hands of an informed and competent teacher, the collection might serve very well as a text-book.—LANE W. LANCASTER.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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CHARLES S. HYNEMAN
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AMERICAN GOVERNMENT AND PUBLIC LAW

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Teaching. What is likely to be the effect of the "new deal" on the teaching of the social sciences? *George W. Eddy.* Training for citizenship in the secondary schools of New York City. *Madge M. McKinney.* Pupil criticism of a course in problems of American democracy. *Frank L. Clayton.* Civic education for the public schools. *Harry L. Kriner.* The teaching of current events. *Edna McCaull Bohlman.* The new order and the social studies. *Houston Cole.* Developing pupils' interest in social science. *George D. Lundberg.* Social Studies. Dec., 1934. Jan., Feb., 1935.

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Congress

Among the recent hearings of interest are those by the House special committee on un-American activities (the Dickstein committee); the House committee on immigration and naturalization, on amendments to the immigration laws; the Senate special committee investigating the munitions industry, on the manufacture and sale of arms and other war munitions.

House of representatives. Internal revenue taxation, joint committee. Summary of British tax system with special reference to its administration; by Roswell Magill, L. H. Parker, and Eldon P. King. Washington: Govt. Ptg. Off., 1934. 61 p.

This report was presented as the result of investigations made on the spot in England by acknowledged experts in its field. It is especially concerned with the actual working of the income tax in England.

Senate. Council of national defense. Digest of proceedings of the council of national defense (and advisory commission of the council of national defense) during the World War, prepared in narrative form by Franklin H. Martin; presented by Mr. Robinson of Arkansas. Washington: Govt. Ptg. Off., 1934. 700 p.

National Recovery Review Board

[First, second, third] Report to the President of the United States. Washington: Jesse L. Ward, 1934. 3 v.

This is the Darrow report on the N.R.A., and has not been listed before because it was unavailable for distribution. Mr. Darrow's secretary now states that it can be procured from Jesse L. Ward, official reporter, Earle Bldg., Washington, D.C., at a cost of 1½ cents per page. There are 159, 160, and 120 pages respectively, reproduced from typewritten manuscript.

State Department

Report of the delegates of the United States of America to the seventh international conference of American states, Montevideo, Uruguay, December 3–26, 1933. Washington: Govt. Ptg. Off., 1934. 346 p. (Conference series no. 19.)

This is essentially a handbook of the conference including not only the report of the American delegates, but the complete membership and organization of the conference, the text of all addresses given, the texts of all conventions, in Spanish and English, all resolutions, and other miscellaneous material.

STATE AND TERRITORIAL

CALIFORNIA

University of California, Berkeley. Facilities for the study of international relations in the University of California at Berkeley. Berkeley, 1934. 31 p.

———— *Heller committee for research in social economics.* Standards of relief in selected cities of the United States. Berkeley, 1934. 18 p.

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CONNECTICUT

Temporary commission to study the tax laws of the state and to make recommendations concerning their revision. Report. Hartford, 1934. 642 p. Summary of the report. Hartford, 1934. 99 p.

This is an elaborate example of the detailed studies which taxing bodies are making of the theory and practice of taxation, in an effort to meet the depression emergency. It analyzes federal, state, county, and local tax expenditures and revenues; the financing of municipalities; the present system of state and local taxes; the redistribution of the tax burden; and makes recommendations for a future program. Similar studies have recently been issued by the Illinois tax commission ("Constitutional tax rate limitation for Illinois;" "Tax rate limitation, how it would work in DuPage county, Illinois,"), and by the bureau of business research of the college of commerce of the University of Kentucky.

MISSOURI

The University of Missouri, Columbia. The doctrine of *rebus sic stantibus* in international law, by Chesney Hill. Columbia, 1934. 95 p. (University of Missouri studies, v. 9, no. 3.)

This is a study of a problem in international law about which there is a great deal of violent disagreement, but about which little has been written.

RHODE ISLAND

Department of education. Outline of government in Rhode Island for use in schools by Charles Carroll. . . . Providence, 1934. 39 p.

FOREIGN AND INTERNATIONAL

GREAT BRITAIN

Foreign office. British documents on the origins of the war, 1898–1914. Vol. IX. The Balkan wars. Part II, The League and Turkey. London. H. M. S. O., 1934. 1190 p.

MEXICO

Ministry of foreign affairs. The conflict between the civil power and the clergy; an historical and legal essay, by Emilio Portes Gil, attorney-general of the republic. Mexico, Ministry of Foreign Affairs, 1935. 135 p.

Issued by the Mexican embassy at Washington the next day after Senator Borah's resolution proposing investigation by the United States of certain affairs in Mexico, the newspapers called this the "Mexican white book."

———— Septima conferencia internacional Americana. Memoria general y actuacion de la delegación de Mexico. . . . Mexico, Secretaria de relaciones exteriores, 1934. 552 p.

This is the report of the Mexican delegation to the Seventh international conference of American states.

———— Weekly news sheet. . . .

This sheet, containing four pages each issue, is published by the publicity department of the Ministry of Foreign Affairs, and has for its object the dissemination of official news and views of the Ministry concerning Mexican problems which are also of some interest to the United States. The first number was issued December 14, 1934.

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LEAGUE OF NATIONS

Dispute between Abyssinia and Italy. Request by the Abyssinian government under Article 11, Paragraph 2, of the Covenant. Geneva, 1935. 24 p. (C. 49. M. 22. 1935. VII.)

Dispute between Bolivia and Paraguay. Appeal of the Bolivian government under Article 15 of the Covenant. Extracts from the records of the fifteenth ordinary session of the Assembly. Geneva, 1934. 175 p. (League of Nations, Official Journal. Special supplement no. 124.)

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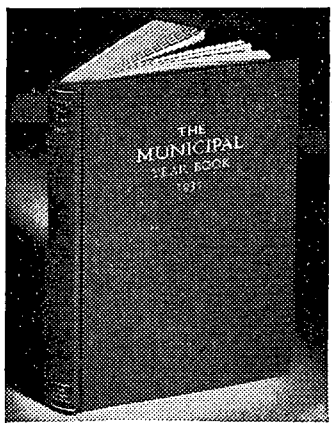

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